

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 43 to 46

Cemeteries and Crematories


Charitable and Curative Institutions

Compilation and Construction of Code

Domestic Relations



40th ANNIVERSARY
of
HOME RULE



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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 20

Title 43

Cemeteries and Crematories

to

Title 46

Domestic Relations



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Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 20 replaces any existing Volume 20 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at customersupport@bender.com; or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

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Council of the District of Columbia

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General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

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5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
8. Environmental and Animal Control and Protection.
9. Transportation Systems.
10. Parks, Public Buildings, Grounds and Space.

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- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
- *17. Review.

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- *21. Fiduciary Relations and Persons with Mental Illness.

DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS

22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

DIVISION V. LOCAL BUSINESS AFFAIRS

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- *28. Commercial Instruments and Transactions.
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- 31. Insurance and Securities.
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- 45. Compilation and Construction of Code.
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- 49. Military.
- 50. Motor and Non-Motor Vehicles and Traffic.
- 51. Social Security.

* Title has been enacted as law.

CITE THIS BOOK

Thus: D.C. Official Code, § _____ (2001 Ed.)

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TITLE 43. CEMETERIES AND CREMATORIES.

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1. Cemetery Associations; Regulatory Provisions.

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§ 43-101. Incorporation; powers.

When 5 or more persons shall associate themselves together for the purpose of forming a cemetery association in the District, such persons shall have the power to adopt a corporate name, and by that name shall be known as a body corporate, and by that name shall have perpetual succession and be invested with all powers, rights, privileges, liabilities, and immunities incident to corporations, and may have a common seal, and may alter or change the same at their pleasure.

(Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 658.)

Section references. — This section is referred to in §§ 43-106, 43-107, 43-108, and 43-128.

Prior Codifications. — 1981 Ed., § 27-101.
1973 Ed., § 27-101.

§ 43-102. Powers to acquire and sell land.

Such persons so associated shall have power to acquire by gift, grant, or

purchase any lot or lots of land not exceeding 50 acres, and lay out the same for a burial place for the dead, with convenient aisles, and to sell the same for such purpose and for no other purposes, reserving a sufficient portion thereof for the burial of the stranger and indigent.

(Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 659.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-102. 1973 Ed., § 27-102.

§ 43-103. Burial ground to be platted and surveyed.

They shall cause the land designed as a burial ground to be surveyed and platted, and a plat of the ground so surveyed shall be recorded in the Office of the Surveyor of the District. Each lot shall be duly numbered by the Surveyor and such number shall be marked on the plat and recorded.

(Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 660.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-103. 1973 Ed., § 27-103.

§ 43-104. Inclosure and ornamentation of land; purchase of equipment.

Such association shall have power to inclose and ornament their burial ground, to build and erect a hearse house, and keep the same in proper repair; to purchase a hearse or hearses, and to do all other necessary acts to the end that all the appliances, conveniences, and benefits of a public and private cemetery may be obtained.

(Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 661.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-104. 1973 Ed., § 27-104.

CASE NOTES

In general.

District of Columbia statutes granting cemetery associations power to inclose and ornament their burial ground authorized tax-exempt religious organization operating public cemetery as part of its religious activity to sell in competition with private enterprise monu-

ments, markers, etc., for use in the cemetery only, proceeds of the sales being used solely for maintenance of cemetery grounds. D.C. Code 1961, §§ 27-101 et seq., 27-102, 27-104, 27-106. *Clagett v. Vestry of Rock Creek Parish*, 241 F. Supp. 950, 1965 U.S. Dist. LEXIS 9381 (D.D.C.1965).

§ 43-105. Duty to inclose and underdrain.

It shall be the duty of the owner or owners of any cemetery or cemeteries in the District to inclose such cemetery or cemeteries with good and sufficient walls or fences to prevent entrance thereto or exit therefrom except by gates provided for that purpose. Such cemetery or cemeteries shall, if required by the Mayor of said District, be underdrained to such a depth as will prevent water remaining in any grave or vault therein.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 671.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-105. 1973 Ed., § 27-105.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 43-106. Application of proceeds of sales of lots.

The proceeds arising from the sale of lots, after deducting all expenses of purchasing and laying out the same, shall be applied, appropriated, and used in improving and ornamenting the burial ground, or for other purposes named in §§ 43-101 to 43-114, 43-116 to 43-118, 43-119 to 43-128.

(Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 662.)

Section references. — This section is referred to in §§ 43-107 and 43-128.

Prior Codifications. — 1981 Ed., § 27-106. 1973 Ed., § 27-106.

CASE NOTES

In general.

District of Columbia statutes granting cemetery associations power to inclose and ornament their burial ground authorized tax-exempt religious organization operating public cemetery as part of its religious activity to sell in competition with private enterprise monu-

ments, markers, etc., for use in the cemetery only, proceeds of the sales being used solely for maintenance of cemetery grounds. D.C. Code 1961, §§ 27-101 et seq., 27-102, 27-104, 27-106. *Clagett v. Vestry of Rock Creek Parish*, 241 F. Supp. 950, 1965 U.S. Dist. LEXIS 9381 (D.D.C.1965).

§ 43-107. Officers enumerated; term of office; effect of failure to choose officers.

The officers of any such corporation shall be a president, a treasurer (who shall act as a secretary), and not less than 3 directors, who shall be severally chosen annually by ballot, and shall hold office until their successors are chosen. Any neglect to choose officers on the day fixed upon for that purpose shall not operate as a forfeiture of the act of incorporation, in accordance with the provisions of §§ 43-101 to 43-114, 43-116 to 43-118, 43-119 to 43-128.

(Mar. 3, 1901, 31 Stat. 1294, ch. 854, § 663.)

Section references. — This section is referred to in §§ 43-106 and 43-128.

Prior Codifications. — 1981 Ed., § 27-107. 1973 Ed., § 27-107.

§ 43-108. Election of officers.

The first election of officers by the persons associating, according to and for the purpose specified in § 43-101, shall be at the time and place designated and agreed upon by a majority of the persons so associating themselves together, and no other than such persons shall vote at such election.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 664.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-108. 1973 Ed., § 27-108.

§ 43-109. Lot owners are voting members of corporation.

At each subsequent election of officers of any such corporation the owner of a lot in said burial ground shall be entitled to 1 vote in the election of officers of the corporation and no more, and shall, by virtue of such membership, be a member of the corporation.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 665.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-109. 1973 Ed., § 27-109.

§ 43-110. Bylaws.

Each corporation shall have power to establish and change bylaws and prescribe rules and regulations for its government and the duties of its officers and the management of its property.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 666.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-110. 1973 Ed., § 27-110.

§ 43-111. Exemption from taxation and sale on execution.

The property of any such corporation, its grounds, lots, and appliances, shall be exempt from taxation and shall not be liable to sale on execution.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 667.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-111. 1973 Ed., § 27-111.

§ 43-112. Dedication of land; title vested in perpetuity.

Any person desiring to dedicate any lot of land, not exceeding 5 acres, as a burial place for the interment of the dead for the use of any society, association, or neighborhood may, by deed duly executed and recorded, convey such land to the District of Columbia, by the corporate name of said District of Columbia, specifying in such deed the society, association, or neighborhood for the use of which the dedication is desired to be made, and thereby (provided such conveyance shall be accepted by the Mayor of the District of Columbia) vest the

title to such land in perpetuity, for the uses stated in the deed, and such land shall be thereafter exempt from taxes for all purposes whatever.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 668.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-112. 1973 Ed., § 27-112.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 43-113. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the court having probate jurisdiction shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(3).)

Section references. — This section is referred to in §§ 19-904, 19-1304.09, 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-113. 1973 Ed., § 27-113.

CASE NOTES

In general.

The trusts for the perpetual maintenance of cemetery lots and of monuments and other structures erected thereon, expressly authorized by Code D.C. § 669 (D.C. Code 1929, T. 5, § 83), are not forbidden because section 1023 of such Code (D.C. Code 1929, T. 25 § 112) prohibiting perpetuities and restraints upon alienation, does not in terms make an exception in favor of the trusts provided for in the earlier section. *Iglehart v. Iglehart*, 27 S.Ct. 329, 1907 U.S. LEXIS 1474 (U.S. Dist. Col. 1907).

A testamentary trust in favor of the Green-

wood Cemetery Company of Brooklyn, permitted by the laws of New York, for the perpetual maintenance of a cemetery lot and monument, will, on principles of comity, be upheld in the courts of the District of Columbia, although the testatrix was domiciled in the District at the time of her death, and the funds to be applied to such trust arose from property owned by her in the District at that time, since, under Code D.C. § 669 (D.C. Code 1929, T. 5, § 83) grants on similar trusts are permitted to domestic corporations. *Iglehart v. Iglehart*, 27 S.Ct. 329, 1907 U.S. LEXIS 1474 (U.S. Dist. Col. 1907).

§ 43-114. Distance from City and from dwellings.

No person or persons or cemetery association shall lay out any new cemetery, or part of any cemetery, within the City of Washington, in the District of Columbia, nor in said District, within one and one-half miles from the boundaries of said City; no person or cemetery association shall, in said District, lay out any cemetery, or part of any cemetery, within less than 200 yards of any dwelling house, except with the written consent of the owner, lessee, and occupant of such house, nor without a permit to do so from the Mayor of said District.

(Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 670; Apr. 9, 1997, D.C. Law 11-255, § 26, 44 DCR 1271.)

Section references. — This section is referred to in §§ 43-106, 43-107, 43-115, and 43-128.

Prior Codifications. — 1981 Ed., § 27-114. 1973 Ed., § 27-114.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 43-115. Mayor authorized to license certain lands for cemetery purposes.

Without regard to the provisions of § 43-114, the Mayor of the District of Columbia is hereby authorized to license for cemetery purposes any parcel of land in the District of Columbia which does not exceed 1 acre in size, and which, except for a 1-side frontage of less than 100 feet on a public street or highway, is otherwise completely bounded by land dedicated to cemetery purposes.

(July 14, 1956, 70 Stat. 538, ch. 594, § 1.)

Prior Codifications. — 1981 Ed., § 27-115. 1973 Ed., § 27-114a.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 43-116. Lots to be conspicuously marked; plat to be recorded; size and depth of graves.

It shall be the duty of the owner or owners of any cemetery or cemeteries in the District to divide the area to be used for graves into lots of reasonable size, to be permanently designated by conspicuous marks, so that the position of each may be readily determined, each lot to be duly numbered. A plat of such cemetery showing the area so divided, the division into lots, and the number of each such lot shall be filed in the Office of the Surveyor of said District; the grave spaces hereafter laid out for the burial of persons above 10 years of age to be at least 8 feet by 3 feet, and those for the burial of children under 10 years of age at least 6 feet by 2 feet, or, if preferred by said owner or owners, one-half the measurement of the adult grave space, namely, 4 feet by 3 feet. No coffin shall be buried in said District so that any part thereof is within less than 4 feet of the ordinary level of the ground, unless it contains the body of a child under 12 years of age, when it shall not be less than 3 feet below that level.

(Mar. 3, 1901, 31 Stat. 1295, 1297, ch. 854, §§ 672, 681.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-116. 1973 Ed., § 27-115.

§ 43-117. Register of burials; contents.

It shall be the duty of the owner or owners of any cemetery or cemeteries in the District to cause to be kept in the office of the superintendent or person in charge of such cemetery or cemeteries a register showing the number of each lot, the name, age, cause of death, and date of burial of each person or persons buried in any such lot or grave space, and the number of the burial permit authorizing such burial. In cases of disinterment said register shall show the date of such disinterment and the number of the official permit therefor opposite the name of the person whose remains are disinterred. Such register shall be at all times open to inspection by duly authorized representatives of the Department of Health and of the Police Department of said District.

(Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 673; Mar. 2, 2007, D.C. Law 16-191, §§ 8(a), 65(a), 53 DCR 6794.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-117. 1973 Ed., § 27-116.

Effect of amendments. — D.C. Law 16-191 substituted "Health" for "Human Services".

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 43-118. Superintendent of cemetery to register at Department of Human Services.

It shall be the duty of the superintendent or person in charge of any cemetery or other place for the disposal of dead bodies of human beings in the District of Columbia to register his or her name at the office of the Department of Health of said District, giving full name, residence, and place of business, and in case of removal from one place to another in said District to make change in such register accordingly.

(Mar. 3, 1901, 31 Stat. 1296, ch. 854, § 674; Mar. 2, 2007, D.C. Law 16-191, §§ 8(b), 65(b), 53 DCR 6794.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-118. 1973 Ed., § 27-117.

Effect of amendments. — D.C. Law 16-191 substituted “Health” for “Human Services”.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 43-117.

§ 43-119. Movement or disposal of tissue taken from dead body.

The Council of the District of Columbia may, by act, authorize tissue banks operating pursuant to subchapter III of Chapter 15 of Title 7, or other persons subject to regulations made pursuant to subchapter II-A or III of Chapter 15 of Title 7, or both, to remove, transport, or dispose of tissue taken from such dead body.

(Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676; Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1; Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 10; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(f); Oct. 8, 1981, D.C. Law 4-34, § 29(c)(1), 28 DCR 3271; Apr. 15, 2008, D.C. Law 17-145, § 30(g)(1), 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(f), 56 DCR 1117.)

Section references. — This section is referred to in §§ 7-1541.01, 7-1541.02, 7-1541.03, 7-1541.04, 7-1541.06, 7-1541.07, 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-119. 1973 Ed., § 27-119a.

Effect of amendments. — D.C. Law 17-145 substituted “subchapter II-A” for “subchapter II”.

D.C. Law 17-353 validated a previously made technical correction.

Legislative history of Law 4-34. — Law 4-34, the “Vital Records Act of 1981,” was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-145. — Law

17-145, the “Uniform Anatomical Gift Revision Act of 2008”, was introduced in Council and assigned Bill No. 17-58 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-311 and transmitted to both Houses of Congress for its review. D.C. Law 17-145 became effective on April 15, 2008.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

CASE NOTES

In general.

Board of Funeral Directors and Embalmers could not find that undertaker violated section of statute regulating disposal of dead bodies where he had not been charged with violation of

this section. D.C. Code 1981, § 27-119. *Vann v. District of Columbia Bd. of Funeral Directors & Embalmers*, 480 A.2d 688, 1984 D.C. App. LEXIS 439 (1984).

§ 43-120. Keeping and exhibiting dead bodies.

No dead body or part thereof shall be kept in said District in such manner as to give rise to any offensive odors to the annoyance of any person or persons in the neighborhood or to the public, nor so as to be exposed to the public view; nor shall any such body or part thereof be permitted by the person or persons having custody or control of it to remain unburied for a longer period than 1 week after death without permission of the Director of the Department of Health, unless it has been cremated or deposited in the vault of some cemetery; nor shall any person publicly exhibit in said District, for pay or otherwise, any dead body of any human being or any part of such body without a permit from the Director of the Department of Health of said District so to do, except such exhibition be in connection with some government museum or with some institution of learning permanently located in said District.

(Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 677; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Oct. 8, 1981, D.C. Law 4-34, §§ 29(c)(2), 30(b)(1), 28 DCR 3271; Mar. 2, 2007, D.C. Law 16-191, §§ 8(c), 65(c), 53 DCR 6794.)

Section references. — This section is referred to in §§ 43-106, 43-107, 43-126, and 43-128.

Prior Codifications. — 1981 Ed., § 27-120. 1973 Ed., § 27-120.

Effect of amendments. — D.C. Law 16-191 substituted "Health" for "Human Services".

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 43-119.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 43-117.

CASE NOTES

ANALYSIS

Evidence.

License revocation or suspension.

Evidence.

The statute forbidding exposure of dead bodies or their exhibition in public did not preclude admission in evidence in murder prosecution of a section of skull of the deceased. D.C. Code 1940, § 27-120. *Hart v. U.S.*, 130 F.2d 456, 1942 U.S. App. LEXIS 3123 (1942).

License revocation or suspension.

Acts of undertaker's employee were culpable fault or omissions attributable to undertaker and authorized Board of Funeral Directors and Embalmers to revoke his license where employee left three stillborn fetuses and bodies of two babies overnight inside van parked in fu-

neral home parking lot and did not properly dispose of them the next day and subsequently someone came by and opened the vehicle after which an animal got into the vehicle and dragged the fetuses out into a nearby alley. *Vann v. District of Columbia Bd. of Funeral Directors & Embalmers*, 480 A.2d 688, 1984 D.C. App. LEXIS 439 (1984).

District of Columbia Code authorizes Board of Funeral Directors and Embalmers to revoke or suspend license of any undertaker for violations of laws and regulations of District of Columbia relating to removal or burial or disposal of dead human bodies and thus makes a licensee liable for acts of his employees committed during the course of their employment. D.C. Code 1981, § 47-2843(d)(1). *Vann v. District of Columbia Bd. of Funeral Directors & Embalmers*, 480 A.2d 688, 1984 D.C. App. LEXIS 439 (1984).

§ 43-121. Place of burial.

No person shall bury or cause to be buried within said District the body or part of the body of any deceased person, except in such grounds as were known and used as public or private burial grounds on January 1, 1902, or such as shall thereafter be designated by the Mayor of said District and authorized by him to be used as such.

(Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 678.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-121. 1973 Ed., § 27-121.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 43-122. Mode of burial.

No body shall be buried in said District in any vault unless the coffin be separately entombed in properly cemented stone or brick work, so as to render such vault airtight; such vault, after having been sealed, shall not be opened within 10 years; no body shall be temporarily deposited in any vault for a longer period than 1 month, unless such body is in an hermetically sealed metallic case, nor in any instance for a longer period than 1 year.

(Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 679.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-122. 1973 Ed., § 27-122.

§ 43-123. Reopening graves; graves of pestilential disease victims.

No grave in said District shall be reopened, except for the purpose of disinterment, within 10 years after burial of a person above 12 years of age, or within 8 years after the burial of a child under 12 years of age, unless the grave has been, in the first instance, of sufficient depth to permit subsequent interments, in which case a layer of earth of not less than 1 foot thick shall be left undisturbed over the previously buried coffin, unless such coffin has been separately entombed in properly cemented stone or brick work; but if on reopening any grave the soil be found to be offensive, such soil shall not be disturbed. In no case shall a grave be opened in which has been buried the body of any person who has died of Asiatic cholera, yellow fever, typhus fever, smallpox (including varioloid), leprosy, the plague, tetanus, diphtheria, or scarlet fever; provided, that the Director of the Department of Health of the

District of Columbia may, in his discretion, authorize the opening, under sanitary precautions, of any such grave, and the disinterment and reinterment in the same grave or other suitable burial ground, of the dead body of any person who has died of any of the contagious diseases enumerated above.

(Mar. 3, 1901, 31 Stat. 1297, ch. 854, § 680; Jan. 20, 1936, 49 Stat. 1095, ch. 12; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 2, 2007, D.C. Law 16-191, §§ 8(d), 65(d), 53 DCR 6794.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-123. 1973 Ed., § 27-123.

Effect of amendments. — D.C. Law 16-191 substituted “Health” for “Human Services”.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 43-117.

§ 43-124. Crematories; consent of property owners; permit.

No person shall, in the District of Columbia, build or maintain a crematory or other device for destroying human bodies, except within the limits of some duly-established cemetery in said District unless such person or persons has in writing the consent of the owners of more than one-half of the property within a radius of 200 feet from the place where such crematory is to be erected and maintained and a permit from the Mayor of said District for the erection and maintenance of such crematory or other device; such permit to be for a term of years, not exceeding 5, to be specified therein; provided, that this section shall not apply to such crematories or other devices for destroying human bodies as may have been erected and were in operation on March 3, 1901.

(Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 682; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-124. 1973 Ed., § 27-124.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 43-125. Embalming; removal of tissue immediately after death.

It shall be unlawful for any person or persons to embalm, inject, or by any similar method preserve the dead body, or part of the dead body, of any human being in said District within 4 hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural

causes, or the cause thereof is unknown, such embalming, injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the Chief Medical Examiner. Notwithstanding the provisions of this section, whenever any person is pronounced dead by a physician duly licensed or duly registered under Chapter 29 of Title 3, tissue donated in accordance with the provisions of subchapter II-A or III of Chapter 15 of Title 7 may be removed by or under the supervision of a person licensed under the authority of § 7-1541.03 for preservation in a tissue bank operating pursuant to subchapter III of Chapter 15 of Title 7 [§ 7-1541.01 et seq.], or for use in accordance with the provisions of subchapter II-A of Chapter 15 of Title 7 [§ 7-1521.21 et. seq.], without regard for any time limitation, or for any permit or certificate requirement, established by this section; provided, that with respect to a dead human body in the custody of the Chief Medical Examiner or under his jurisdiction, no tissue shall be removed therefrom for preservation except with the specific approval of the Chief Medical Examiner in each case.

(Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 11; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(e); July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(1); Oct. 8, 1981, D.C. Law 4-34, § 30(b)(2), 28 DCR 3271; Apr. 15, 2008, D.C. Law 17-145, § 30(g)(2), 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(f), 56 DCR 1117.)

Section references. — This section is referred to in §§ 7-1541.01, 7-1541.02, 7-1541.03, 7-1541.04, 7-1541.06, 7-1541.07, 43-106, 43-107 and 43-128.

Prior Codifications. — 1981 Ed., § 27-125. 1973 Ed., § 27-125.

Effect of amendments. — D.C. Law 17-145 substituted “subchapter II-A of Chapter 15 of Title 7” for “subchapter II of Chapter 15 of Title 7”.

D.C. Law 17-353 validated a previously made technical correction.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 43-119.

Legislative history of Law 17-145. — For Law 17-145, see notes following § 43-119.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 43-119.

§ 43-126. Penalty.

Any person who shall violate or aid and abet in violating any of the provisions of § 43-120 shall, upon conviction thereof by competent judicial authority, be punished, for each offense, by a fine of not more than \$200, or by imprisonment for not more than 90 days, or both.

(Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 684; Oct. 8, 1981, D.C. Law 4-34, § 29(c)(3), 28 DCR 3271.)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-126. 1973 Ed., § 27-126.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 43-119.

§ 43-127. Prosecutions.

Prosecutions hereunder shall be in the Superior Court of the District of

Columbia, in the name of said District; provided, that any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said Superior Court of the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Section references. — This section is referred to in §§ 43-106, 43-107, and 43-128.

Prior Codifications. — 1981 Ed., § 27-127. 1973 Ed., § 27-127.

§ 43-128. Court-ordered disinterment or disposal of ashes not affected.

Sections 43-101 to 43-114, 43-116 to 43-118, and 43-120 to 43-128 (except § 43-119) shall not be construed to:

(1) Interfere with or prevent the disinterment of any body in accordance with § 11-2311 [repealed]; or

(2) Interfere with the disposal of the ashes of bodies which have been cremated.

(Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(2); Oct. 8, 1981, D.C. Law 4-34, § 29(c)(4), 28 DCR 3271.)

Section references. — This section is referred to in §§ 43-106 and 43-107.

Prior Codifications. — 1981 Ed., § 27-128. 1973 Ed., § 27-128.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 43-119.

CASE NOTES

In general.

Testimony relative to disinterment and a post mortem examination of decedent's body is admissible, though no notice was given to defendant of the government's intention to make

the investigation, and Code, § 686, D.C. Code 1929, T. 5, § 98, was not complied with. *Laney v. U.S.*, 294 F. 412, 1923 U.S. App. LEXIS 2501 (1923).

§ 43-129. Cremation required in certain cases. [Repealed].

Repealed.

(Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 1; 1973 Ed., § 27-129; Oct. 19, 2000, D.C. Law 13-172, § 2919(c), 47 DCR 6308.)

Section references. — This section is referred to in § 43-131.

Prior Codifications. — 1981 Ed., § 27-129. 1973 Ed., § 27-129.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 2919(c) of the Fiscal Year 2001 Budget Support Emergency

Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2919(c) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May

15, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-175 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

§ 43-130. Public crematory established. [Repealed].

Repealed.

(Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-173, § 1; 1973 Ed., § 27-130; Oct. 19, 2000, D.C. Law 13-172, § 2919(c), 47 DCR 6308.)

Section references. — This section is referred to in § 43-131.

Prior Codifications. — 1981 Ed., § 27-130. 1973 Ed., § 27-130.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2919(c) of

the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 43-129.

§ 43-131. Act for promotion of anatomical science not affected by crematory law.

Nothing in §§ 43-129 to 43-131 shall be construed as repealing or in any way modifying any of the provisions of Chapter 2 of Title 3.

(Apr. 20, 1906, 34 Stat. 124, ch. 1641, § 3.)

Prior Codifications. — 1981 Ed., § 27-131. 1973 Ed., § 27-131.

TITLE 44. CHARITABLE AND CURATIVE INSTITUTIONS.

SUBTITLE I. HEALTH RELATED INSTITUTIONS.

Chapter

1. Assisted Living Residence Regulation.
- 1A. Continuing Care Retirement Communities.
2. Clinical Laboratories.
- 2A. Defibrillator Usage.
3. Grievance Procedures for Health Benefits Plans.
4. Health Services Planning.
5. Health-Care and Community Residence Facility, Hospice and Home Care Licensure.
6. Healthcare Entity Conversion.
- 6A. Hospital Assessments.
7. Hospitals, Asylums, Charities Generally.
8. Medical Records.
9. Mental Health Services.
- 9A. Not-for-Profit Hospital Corporation.
10. Nursing Homes and Community Residence Facilities Protections.
- 10A. Nurse Staffing Agencies.
11. Public Benefit Corporation [Repealed].
12. Substance Abuse Treatment and Prevention.

SUBTITLE II. SPECIAL INSTITUTIONS.

13. Industrial Home School.
14. Forest Haven.
15. Washington Humane Society.

SUBTITLE III. MANAGEMENT OF INSTITUTIONAL FUNDS.

16. Uniform Management of Institutional Funds [Repealed]..
- 16A. Uniform Prudent Management of Institutional Funds.

SUBTITLE IV. CHARITABLE SOLICITATIONS.

17. Charitable Solicitations.

SUBTITLE V. REPEALED PROVISIONS.

18. Certificate of Need [Repealed]..
19. D.C. General Hospital Commission [Repealed].
20. Health Services Planning Program [Repealed].

Chapter

21. Saint Elizabeth's Hospital [Repealed].

SUBTITLE I. HEALTH RELATED INSTITUTIONS.

CHAPTER 1. ASSISTED LIVING RESIDENCE REGULATION.

Subchapter I. Purpose and Philosophy of Care

Sec.

44-101.01. Purpose.

44-101.02. Philosophy of care.

Subchapter II. Definitions

44-102.01. Definitions.

Subchapter III. Licensure and Inspection

44-103.01. Authority to operate an assisted living residence in the District of Columbia.

44-103.02. Initial ALR licensure.

44-103.03. [Expired].

44-103.04. Renewal of ALR license.

44-103.05. Changes in licensee.

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Subchapter IV. Sanctions and Penalties

44-104.01. Sanctions.

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Subchapter V. Resident's Rights and Quality of Life

44-105.01. Standard of care.

44-105.02. Self-determination, choice, independence, participation, and privacy.

44-105.03. Dignity.

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44-105.05. Representation and resolution of grievances and complaints.

44-105.06. Privacy and confidentiality.

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*Subchapter I. Purpose and Philosophy of Care.***§ 44-101.01. Purpose.**

The purpose of this chapter is to set uniform, minimum standards of licensure for community residence facilities currently regulated under Chapter 34 of Title 22 of the District of Columbia Municipal Regulations and other facilities when they provide services that assist residents with the activities of daily living. This chapter creates a new category of licensure called “assisted living residence”.

(June 24, 2000, D.C. Law 13-127, § 101, 47 DCR 2647.)

Legislative history of Law 13-127. — Law 13-127, the “Assisted Living Residence Regulatory Act of 2000,” was introduced in Council and assigned Bill No. 13-107, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on

January 4, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-297 and transmitted to both Houses of Congress for its review. D.C. Law 13-127 became effective on June 24, 2000.

§ 44-101.02. Philosophy of care.

(a) The philosophy of assisted living emphasizes personal dignity, autonomy, independence, privacy, and freedom of choice. Further, the services and physical environment of an assisted living residence should enhance a person’s ability to age in place in a homelike setting by increasing or decreasing the amount of assistance in accordance with the individual’s changing needs.

(b) This chapter shall be interpreted in accordance with the following philosophy of care:

(1) An assisted living residence is a program which combines housing, health, and supportive services for the support of residents aging in place. The function of an assisted living residence is to provide or coordinate personalized assistance through activities of daily living, recreational activities, 24-hour supervision, and provision or coordination of health services and instrumental activities of daily living as needed.

(2) The design of services and environment should acknowledge that a significant number of residents may have some form of cognitive impairment. Services and environment should offer a balance between choice and safety in the least restrictive setting.

(3) Both the program and environment should support resident dignity, privacy, independence, individuality, freedom of choice, decision making, spirituality, and involvement of family and friends.

(4) Residents should be supported to age in place by minimizing the need to move through reasonable accommodation and, when necessary, through coordination and use of home health agencies, hospice, rehabilitation agencies, and other licensed healthcare providers.

(5) Quality, affordable assisted living residence care should be accessible to all individuals residing in the District regardless of income.

(June 24, 2000, D.C. Law 13-127, § 102, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter II. Definitions.

§ 44-102.01. Definitions.

For purposes of this chapter, the term:

(1) “Activities of Daily Living” or “ADLs” means activities including eating, bathing, toileting, grooming, dressing, undressing, mobility, and in place transfers.

(2) “Aging in place” means minimizing the circumstances which require a person to move to a different setting when his or her condition changes.

(3) “Assistant Living Administrator” or “ALA” means the licensee, or a person designated by the licensee, who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living residences.

(4) “Assisted Living Residence” or “ALR” means an entity, whether public or private, for profit or not for profit, that combines housing, health, and personalized assistance, in accordance to individually developed service plans, for the support of individuals who are unrelated to the owner or operator of the entity. “Assisted Living Residence” or “ALR” does not include a group home for persons with mental retardation as defined in § 44-501(5) or a mental health community residence facility as that term is used in Chapter 38 of Title 22 of the District of Columbia Municipal Regulations.

(5) “Change of ownership” means the transfer of ownership by an individual, partnership, or association to another and includes transfers of the legal or beneficial ownership of 10% or more of the stock of a corporation that owns or operates an ALR.

(6) “Chemical restraint” means the use of a psychopharmacologic drug for a purpose other than to treat a standard psychiatric diagnosis whose criteria are set forth by the American Psychiatric Association.

(7) “Cognitive impairment” means the loss of those mental processes that orchestrate relatively simple ideas, movements, or actions into goal directed behavior including a lack of judgement, planning, organization, self-control, and the persistence needed to manage normal demands of the individual’s environment. “Cognitive impairment” refers to a condition that interferes with decision-making skills or effective communication including Alzheimer’s disease, multi-infarct dementia, stroke, Parkinson’s disease, and other neurological conditions.

(8) “Functional assessment” means an assessment of a resident’s ability to perform activities of daily living, instrumental activities of daily living, and the degree of assistance required, if any.

(9) "Health-Care Licensure Act" means subchapter I of Chapter 5 of this title.

(10) "Health-Care Protection Act" means Chapter 10 of this title.

(11) "Healthcare practitioner" means a person licensed as a physician or nurse practitioner.

(12) "Healthcare provider" means a healthcare practitioner, home health agency, hospice, rehabilitation agency, or health management organization.

(13) "In place transfer" means movements that involve changes in position in place. "In place transfer" includes an activity such as moving from a bed to a wheelchair or regular chair, moving from a wheelchair to a toilet, bathtub, shower, or car, and moving from a wheelchair, regular chair, or toilet seat to a standing position.

(14) "Individualized Service Plan" or "ISP" means a written plan developed by the provider, in conjunction with the resident and his or her surrogate, if appropriate, which identifies, among other things, services that the licensee will provide or arrange for the resident.

(15) "Instrumental Activities of Daily Living" or "IADL" means daily activities such as housekeeping, meal preparation, shopping, money management, and travel outside the ALR.

(16) "Licensee" means any person, association, partnership, or corporation to which a license is issued pursuant to this chapter.

(17) "Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached to or adjacent to the resident's body, such as mitts or vests, that the individual cannot remove easily and which restricts freedom of movement or normal access to one's own body.

(18) "Physician's statement" means the form approved by the Mayor pursuant to § 44-108.02(b).

(19) "Resident" means an individual admitted to an ALR pursuant to subchapter VI of this chapter.

(20) "Resident agreement" means the admission agreement between the resident, the resident's surrogate, when appropriate, and the assisted living residence.

(21) "Shared responsibility" means a process by which the resident, or the resident's surrogate, and the ALR arrive at an acceptable balance between the resident's desire for independence and the facility's legitimate concerns for safety, where there is a disagreement. The purpose of "shared responsibility" is to provide complete information to the resident and the surrogate so that the parties can arrive at an informed agreement of which services are to be provided and in what manner.

(22) "Shared responsibility agreement" means a formal written agreement that outlines the responsibilities and actions of all parties. The agreement is a process for resolving discrepancies between the individual resident's right to independence and the provider's concerns for the safety and well being of the individual and others.

(23) "Surrogate" means a person designated by a resident to act on the resident's behalf pursuant to law.

(24) "Trained Medication Employee" or "TME" means an individual employed to work in an ALR who has successfully completed the training program

developed by the Mayor pursuant to § 44-109.06 and who is certified to administer medication to residents.

(June 24, 2000, D.C. Law 13-127, § 201, 47 DCR 2647; Apr. 24, 2007, D.C. Law 16-305, § 68(a), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in par. (4), substituted “persons with mental retardation” for “mentally retarded persons”.

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006”, was introduced in

Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Subchapter III. Licensure and Inspection.

§ 44-103.01. Authority to operate an assisted living residence in the District of Columbia.

It shall be unlawful to operate an assisted living residence in the District of Columbia without being licensed and in compliance with the provisions of this chapter.

(June 24, 2000, D.C. Law 13-127, § 301, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-103.02. Initial ALR licensure.

(a) Applications for licensure shall be made in writing on a form or forms prescribed by the Mayor at least 60 days prior to the date needed.

(b) An applicant for ALR licensure shall pay a licensure fee as determined by the Mayor.

(c) An ALR license issued by the Mayor shall state the effective date and expiration date of the license and maximum number of residents allowed to reside in the ALR.

(d) An application for an ALR license shall include the following information:

(1) Identification of the owner and documentation supporting the fact that the ALR is owned or otherwise under the control of the applicant;

(2) Identification of the ALA and information concerning the ALA’s qualifications;

(3) Criminal background check information pursuant to subchapter II of Chapter 5 of this title;

(4) Documentation and explanation of any prior denial, suspension, or revocation of license to provide care to third parties;

(5) Location of the ALR;

(6) Statement of program;

(7) Proof of solvency;

- (8) Proof of insurance coverage;
- (9) Statement of services to be offered;
- (10) Maximum number of residents planned;
- (11) Verification that the real property where the ALR is located is owned, leased, or otherwise under the control of the applicant; and
- (12) Structure of applicant's organization and names of board members and officers.

(e)(1) The Mayor shall conduct an initial pre-licensure inspection of the premises of the ALR and of its records.

(2) An applicant for licensure shall provide the following information at the time of the pre-licensure inspection:

- (A) Certificate of occupancy;
- (B) Disaster plan;
- (C) Staffing plan;
- (D) Resident funds management system;
- (E) Medication management system;
- (F) Individual Service Plan policy and procedures;
- (G) Admission, transfer, and discharge policies;
- (H) Resident agreements, both financial and nonfinancial;
- (I) Location of the ALR;
- (J) Maximum number of residents to be served;
- (K) Program statement;
- (L) Proof of solvency; and
- (M) Other reasonably relevant information required by the Mayor.

(f) Based on information obtained during the pre-licensure inspection required by subsection (e) of this section, the Mayor shall either approve the application unconditionally for 12 months or deny the application.

(g) The Mayor shall re-inspect an ALR within 6 months of the effective date of the initial licensure.

(June 24, 2000, D.C. Law 13-127, § 302, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-103.03. Special ALR licensure for community residence facilities.

Expired.

(June 24, 2000, D.C. Law 13-127, § 303, 47 DCR 2647.)

Legislative history of Law 13-127. — For this section, this section expired 3 years after Law 13-127, see notes following § 44-101.01. June 24, 2000.

Editor's notes. — Pursuant to subsec. (c) of

§ 44-103.04. Renewal of ALR license.

- (a) An ALR license shall be renewed every 12 months.
- (b) Applications for renewal of a license shall be made in writing on a form

or forms prescribed by the Mayor at least 60 days prior to the expiration of the license. The Mayor shall renew a license after receiving an application containing the information required by § 44-103.02(d) and completion of an inspection of the premises, if the Mayor finds that the application meets the requirements of this chapter.

(c) The Mayor shall issue the renewal license prior to the expiration date of the existing license if the applicant submits an application for renewal within 90 to 60 days prior to the expiration of the license and the Mayor finds that the application meets the requirements of this chapter.

(d) An applicant for renewal shall pay a renewal fee as determined by the Mayor. The fee shall cover the costs involved in processing the renewal applications and conducting inspections of the premises.

(e) Based on information provided to the Mayor and by the on-site inspection, the Mayor shall:

(1) Renew the license for 12 months;

(2) Issue a provisional license for up to 12 months if the ALR is not in full compliance with the regulations but, in the opinion of the Mayor, the noncompliance does not constitute an immediate safety or health hazard and the licensee has submitted to the Mayor an acceptable plan of correction with specific time frames; or

(3) Suspend or revoke the license as specified in § 44-104.01.

(June 24, 2000, D.C. Law 13-127, § 304, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-103.05. Changes in licensee.

(a) The following changes occurring within an ALR shall require revision of the license:

(1) Change in the maximum number of residents for which the facility is licensed;

(2) Name change of the ALR;

(3) Change in ownership of the ALR;

(4) Change in location of the ALR; or

(5) Voluntary closure of the ALR.

(b) A request for changes which requires the reissuance of a license shall be made in writing to the Mayor at least 60 days in advance of the effectiveness of the changes. An application fee, as established by the Mayor, shall accompany a request for changes.

(c)(1) The licensee shall notify residents and their surrogates of any proposed changes set forth in its request for changes, in writing, 60 days before the effective date of the proposed changes.

(2) A licensee shall include the following information in its request for changes:

(A) The method for informing residents and their surrogates of its intent to make the requested changes; and

(B) The actions the licensee shall take to assist residents in securing comparable housing, if necessary.

(d)(1) Whenever there is a change of ownership, sale, assignment, or other transfer of an ALR from the person or organization named on the license to another person or organization, the transferee shall apply for a new license.

(2) A transferee shall apply for a new license at least 60 days before the final transfer.

(3) The licensee named under the current license shall remain responsible for the operation of the ALR until a new license is issued to the transferee.

(4) The Mayor shall issue a new license to the transferee if the transferee meets the requirements for licensure under this chapter. Upon issuance of the new license to the transferee, the transferor shall return its license to the Mayor by certified mail.

(June 24, 2000, D.C. Law 13-127, § 305, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-103.06. Inspections.

(a) In addition to the inspections required by § 44-103.02(e), the Mayor may inspect an ALR at the Mayor's discretion to ensure compliance with this chapter.

(b) The Mayor shall at all times ensure that any ALR licensed pursuant to this chapter is able to continually provide appropriate care to its residents. The Mayor shall notify an ALR if, at any time, the Mayor determines that the ALR is unable to provide appropriate care to any of its residents.

(c) Inspection of an ALR, or prospective ALR, for purposes of initial licensure or compliance after license renewal shall be conducted by the Mayor following the procedures set forth in § 44-505 and the requirements of this chapter.

(d) If, upon inspection, the Mayor determines that an ALR, or prospective ALR, is in violation of one or more of the requirements of this chapter, the Mayor shall give written notice of such violation to the ALR, or prospective ALR, within 15 working days of the inspection and may suggest a remedy for each violation.

(e) The violating ALR, or prospective ALR, shall submit a written response to the Mayor within 15 working days of receipt of the Mayor's notice. The violating ALR, or prospective ALR, may deny the alleged violation, accept the Mayor's suggested remedy, or propose its own remedy.

(f) If the Mayor accepts the ALR's, or prospective ALR's, written response, the Mayor may either issue a license to the ALR, or prospective ALR, if appropriate, or conduct a follow-up inspection to confirm compliance.

(g) If the Mayor and the ALR, or prospective ALR, cannot agree on an acceptable corrective action, or if the ALR, or prospective ALR, fails to respond in writing within 15 working days of receipt of the Mayor's notice, the Mayor shall determine what action to take, including a penalty in accordance with this chapter and give the ALR, or prospective ALR, notice of his or her determination.

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(h) The Mayor may inspect an ALR for the purpose of investigating a complaint.

(June 24, 2000, D.C. Law 13-127, § 306, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-103.07. Restrictions.

(a) An ALR licensed pursuant to this chapter shall not use in its title the words “hospital,” “sanatorium,” “nursing,” “convalescent,” “rehabilitative,” “sub-acute,” or “hospice.”

(b) Only a licensed ALR may describe, market, and offer itself as such. No other entity, whether licensed or not by the District government, shall describe, market, or offer itself as an Assisted Living Residence without first obtaining an ALR license. Violation of this requirement shall constitute operation of an ALR without a license and shall be subject to penalties in accordance with this chapter.

(June 24, 2000, D.C. Law 13-127, § 307, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-103.08. Appeals.

Appeals under this subchapter may be taken pursuant to subchapter XII of this chapter.

(June 24, 2000, D.C. Law 13-127, § 308, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter IV. Sanctions and Penalties.

§ 44-104.01. Sanctions.

(a) The sanctions set forth in § 44-509.

(b) On determining that a licensee has violated this chapter, the Mayor, in addition to the sanctions required by subsection (a) of this section, may:

- (1) Restrict the number of residents the licensee may admit;
- (2) Require the licensee to reduce the number of residents in its care;
- (3) Require the licensee and any of its staff to receive remedial instruction or training in a specific area;
- (4) Require the licensee to use the services of a management firm approved by the Mayor;
- (5) Notify or require the licensee to notify a resident who is affected by the violation and his or her surrogate;
- (6) Increase the frequency of monitoring visits during a specified period of time;

(7) Enter into an agreement with the licensee establishing certain conditions for continued operation, including time limits for compliance; and

(8) Petition a court of competent jurisdiction to appoint a receiver as provided in subchapter II of Chapter 10 of this title.

(c) If the Mayor determines that the licensee has violated a condition or requirement of an imposed sanction, the Mayor may suspend or revoke the license.

(d) Appeals under this section may be taken pursuant to subchapter XII of this chapter.

(June 24, 2000, D.C. Law 13-127, § 401, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-104.02. Civil Penalties.

(a) The Mayor may impose one or more of the civil penalties authorized under § 44-509 against persons who:

(1) Maintain or operate an unlicensed ALR; or

(2) Otherwise violate provisions of this chapter.

(b) Notwithstanding any other provision of law, penalties authorized under § 44-509 shall not be imposed by the Mayor unless a violation, cited during an inspection:

(1) Is within the control of the ALR; and

(2) Poses an immediate or serious and continuing danger to the health, safety, welfare, or rights of residents.

(c) If during a follow-up inspection the Mayor determines that violations within the control of the facility which were cited in an immediately prior inspection have not been corrected or have recurred, the Mayor may impose penalties authorized under § 44-509

(d) Appeals under this section may be taken pursuant to subchapter XII of this chapter.

(June 24, 2000, D.C. Law 13-127, § 402, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-104.03. Criminal penalties.

The criminal penalties set forth in § 44-509 shall apply to an ALR.

(June 24, 2000, D.C. Law 13-127, § 403, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-104.04. Emergency suspension.

(a) The Mayor may immediately suspend, as an emergency action, a license

on finding that the licensee's premises are unsafe for human habitation or pose an immediate threat to the health and safety of its residents.

(b) The Mayor shall deliver a written notice to the licensee informing it of the emergency suspension, giving the reasons for the suspension, providing the provisions of law with which the licensee has failed to comply that form the basis for the emergency suspension, and notifying the ALR of its right to request a hearing and to be represented by counsel.

(c) The filing of a hearing request shall not stay the emergency suspension. If the licensee is dissatisfied with the emergency suspension, it may appeal the suspension as provided in § 44-505.

(d) When a license is suspended pursuant to this section, the licensee shall immediately return the license to the Mayor, notify the residents and surrogates of the suspension, and make every effort to assist them in making other assisted living arrangements.

(June 24, 2000, D.C. Law 13-127, § 404, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter V. Resident's Rights and Quality of Life.

§ 44-105.01. Standard of care.

(a) An ALR must care for its residents in a manner and in an environment that promotes maintenance and enhancement of the residents' quality of life and independence.

(b) In order to promote resident independence and aging in place in a residential setting, at a minimum, an ALR shall offer or coordinate for payment 24 hour supervision, assistance with scheduled and unscheduled activities of daily living, and instrumental activities of daily living as needed, as well as provision or coordination of recreational and social activities and health services in a way that promotes optimum dignity and independence for the residents.

(June 24, 2000, D.C. Law 13-127, § 501, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.02. Self-determination, choice, independence, participation, and privacy.

(a) A resident shall have the right to be treated at all times as follows:

- (1) Courteously;
- (2) Respectfully;

(3) With full recognition of personal dignity and individuality; and

(4) With assurance of privacy and the opportunity to act autonomously and share in the responsibility for decisions.

(b) A resident of an ALR shall have the right to live in an environment that:

(1) Maintains and enhances the resident's dignity, independence, and respect in full recognition of his or her individuality and physical and mental capabilities;

(2) Is creatively designed to counter loneliness, depression, dependence, boredom, and designed to manage difficult behavior;

(3) Provides opportunities for socialization, social interaction, leisure activities, and spiritual and religious activities consistent with the preferences and background of the resident; and

(4) Facilitates participation by arranging for transportation and assisting with communication and social skills and other services.

(June 24, 2000, D.C. Law 13-127, § 502, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.03. Dignity.

A resident shall have the right to the following:

(1) A safe, clean, comfortable, stimulating, and homelike environment allowing the resident to use personal belongings to the greatest extent possible;

(2) Control time, space, and lifestyle;

(3) Free access to visitors of his or her choice;

(4) To receive and send correspondence without any restrictions;

(5) To maintain personal possessions to the extent the health, safety, and well being of others is not disturbed;

(6) To remain in his or her living unit unless a change corresponds to the uncoerced preference of the resident or conforms to the obligations set forth in the resident's contract respecting discharge and is related to the resident's preference or to transfer conditions stipulated in his or her contract with the ALR;

(7) To approve his or her roommate whenever possible, if the resident is living in a semi-private unit;

(8) To attend or not attend religious services of his or her choice;

(9) To choose activities and schedules consistent with his or her interests, and physical, mental, and psychosocial well-being;

(10) To interact with members of the community inside and outside the facility and make choices about aspects of his or her life in the facility that are significant to the resident;

(11) To be free from mental, verbal, emotional, sexual and physical abuse, neglect, involuntary seclusion, and exploitation; and

(12) To participate in the development, implementation, and review of plans designed to provide services to residents, including the Individualized Service Plan.

(June 24, 2000, D.C. Law 13-127, § 503, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.04. Accommodation of needs.

A resident shall have the right to the following:

- (1) To receive adequate and appropriate services and treatment with reasonable accommodation of individual needs and preferences consistent with their health and physical and mental capabilities and the health or safety of other residents;
- (2) To have access to appropriate health and social services, including social work, home health, nursing, rehabilitative, hospice, medical, dental, dietary, counseling, and psychiatric services in order to attain or maintain the highest practicable physical, mental and psychosocial well-being;
- (3) To remain in the current setting, forgoing a recommended transfer to obtain additional services as contracted for by the resident or secure additional services in a manner acceptable to the ALR;
- (4) To engage in a shared responsibility agreement with the ALR which is acceptable to the resident and the ALR and does not violate any applicable law;
- (5) To refuse to participate in any service once the potential consequences of such participation have been explained and a shared responsibility agreement has been reached, if necessary, between the resident, the surrogate, and the ALR;
- (6) To be free of physical restraints at all times; and
- (7) To be free of chemical restraints.

(June 24, 2000, D.C. Law 13-127, § 504, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.05. Representation and resolution of grievances and complaints.

(a) A resident shall have the right to the following:

- (1) To designate a person as his or her surrogate or to have their guardian, or advance directives or surrogate health decision maker, act for them if for any reason the resident cannot act for him or herself;
- (2) To uncoerced consent;
- (3) To present grievances and complaints without fear of threat of retaliation and have them acknowledged and acted upon promptly with due respect to the provisions of this chapter;
- (4) To have access to an internal grievance and complaint procedure for any denial of services or rights provided for under this chapter and to an external review process by an independent person or entity;
- (5) To address grievances and complaints to representatives of the Office of the Long-Term Care Ombudsman of the District of Columbia pursuant to Chapter 7 of Title 7 or other representative;
- (6) To appoint a specially designated person or attorney to represent the resident in any grievance or complaint, procedure, or appeal process who shall have access to all necessary and relevant books and records of the ALR; and
- (7) To organize and participate in and hold meetings of resident groups in

the ALR and invite staff or visitors to the meetings and have a designated staff person to assist and respond to written requests resulting from the meetings.

(b) The ALR shall maintain complete written records of the filing and disposition of all grievances, complaints, and appeals.

(c) Appeals under this section may be taken pursuant to subchapter XII of this chapter.

(June 24, 2000, D.C. Law 13-127, § 505, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.06. Privacy and confidentiality.

(a) A resident shall have the right to the following:

(1) To access their ALA and healthcare records on demand;

(2) To have their records kept confidential and released only in accordance with their informed uncoerced consent in accordance with District and federal law;

(3) To have their records maintained during their residency;

(4) To have their records maintained for up to 3 years after discharge or death; and

(5) To have any case discussion, consultation, examination, or treatment of the resident be kept confidential.

(b) If, for any reason, a resident cannot act for him or herself, their consent shall be given on their behalf by their designated surrogate which consent shall also be uncoerced and informed.

(June 24, 2000, D.C. Law 13-127, § 506, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.07. Full disclosure.

A resident shall have the right to full disclosure of contract terms and billing practices that are fair and reasonable.

(June 24, 2000, D.C. Law 13-127, § 507, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.08. Notice of resident's rights.

An ALR shall place a copy of a document delineating the resident's rights, as set forth in this chapter, in a conspicuous location, plainly visible and easily read by residents, staff, and visitors and provide a copy to each resident and resident's surrogate upon admission and at the time of any change to the resident's status, level of care, or services available to the resident.

(June 24, 2000, D.C. Law 13-127, § 508, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-105.09. Abuse, neglect, and exploitation.

(a) An ALR shall develop and implement policies and procedures prohibiting abuse, neglect, and exploitation of residents.

(b)(1) An ALR, employee of an ALR, or other person who believes that a resident has been subjected to abuse, neglect, or exploitation shall report the alleged abuse, neglect, or exploitation immediately to the assisted living administrator who shall take appropriate action to protect the resident. The ALR shall report any allegation of abuse, neglect, or exploitation brought to its attention to the Mayor and the Adult Protective Services Program, administered by the Family Services Administration of the Department of Human Development.

(2) An ALR or employee of an ALR may be subject to a penalty imposed by the Mayor for failure to report an alleged incident of abuse, neglect, or exploitation pursuant to Chapter 19 of Title 7.

(3) An ALR shall thoroughly investigate any allegation of abuse, neglect, or exploitation and shall take appropriate action to prevent further incidents. The ALR shall report the results of its investigation and actions taken, if any, to the Mayor.

(c) An ALR shall post signs that set forth the reporting requirement of this section conspicuously in the employee and public areas of the ALR.

(June 24, 2000, D.C. Law 13-127, § 509, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter VI. Admissions; Residential Agreements; Quality of Care; Discharge; Transfer.

§ 44-106.01. Admissions.

(a) An ALR shall accept as residents only individuals for whom the ALR can provide appropriate services unless the ALR arranges for third party services or the resident does so with the agreement of the ALR.

(b) Prior to admission of a resident, the ALA or designee shall determine that the resident is appropriate for admission to the ALR and that the resident's needs can be met in addition to the needs of the other residents.

(c) An ALR may only admit individuals who are at least 18 years of age.

(d) No individual may be admitted who at the time of initial admission, and as established by the initial assessment:

(1) Is dangerous to him or herself or others or exhibits behavior that significantly and negatively impacts the lives of others, where the ALR would be unable to eliminate such danger or behavior through the use of appropriate treatment modalities; or

(2) Is at high risk for health or safety complications which cannot be

adequately managed by the ALR and requires more than 35 hours per week of skilled nursing and home health aide services combined, provided on less than a daily basis, according to section 2113.1 of HCFA Pub. 75 and 42 CFR, sections 409.32, 409.33, and 409.44.

(e) An ALR shall not admit individuals who require the following:

(1) More than intermittent skilled nursing care;

(2) Treatment of stage 3 or 4 skin ulcers;

(3) Ventilator services; or

(4) Treatment for an active, infectious, and reportable disease or a disease or condition that requires more than contact isolation.

(f) The ALR shall maintain records of all denials of admission.

(g) Nothing in this section shall automatically exclude persons with primary or secondary mental health issues from admission.

(June 24, 2000, D.C. Law 13-127, § 601, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.02. Resident agreements.

(a) A written contract must be provided to the resident prior to admission and signed by the resident or surrogate, if necessary, and a representative of the ALR. The nonfinancial portions of the contract shall include the following:

(1) The ALR's organizational affiliations (including parent or subsidiary organizations, religious or charitable affiliation, and management company);

(2) The specific nature of any special care that it holds itself out to provide, such as specialty in Alzheimer's disease or Parkinson's disease;

(3) An identification of services to be included and excluded, part of which is the ISP;

(4) A list of resident rights including grievance procedures;

(5) Unit assignment and procedures if changes occur;

(6) Admission and discharge policies which include clear and specific criteria for admission, transfer, and discharge;

(7) A description of responsibility for provision or coordination of healthcare, if any;

(8) An arrangement for notification in case of the resident's death; and

(9) A disposition of the resident's property upon discharge, transfer, or death of the resident.

(June 24, 2000, D.C. Law 13-127, § 602, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.03. Financial agreements.

(a) The written resident agreement required by § 44-106.02 shall include financial provisions which indicate the following:

(1) The obligations of the ALR, the resident, or the resident's surrogate as to performance of the following:

- (A) The handling of the finances of the resident;
- (B) The purchasing or renting of essential or desired equipment and supplies;
- (C) The coordinating and contracting for services not covered by the resident agreement; and
- (D) The purchasing of medications and durable medical equipment;

(2) Separate and accurate records of all funds and personal property deposited with or managed by the ALR for the benefit of a resident which include a receipt stating the date, amount, and purpose of any transaction and the current balance;

(3) Rate structure and payment provisions covering all rates to be charged to the resident, including the following:

- (A) Service packages;
- (B) Fee for service rates; and
- (C) Any other nonservice related charges;

(4) Payment arrangements and fees, if known, for third-party services not covered by the resident agreement, but arranged for by either the resident, the resident's surrogate, or the ALR;

(5) Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the resident's funds;

(6) A provision which provides at least 45 days notice of any rate increase except if necessitated by a change in the resident's medical condition;

(7) The procedures the ALR will follow in the event the resident or surrogate can no longer pay for services provided for in the resident agreement or for additional services or care needed by the resident; and

(8) The terms governing the refund of any pre-paid fees or charges in the event of a resident's discharge from the ALR or termination of the resident agreement.

(b) The ALR shall establish billing, payment, and credit practices that are fair and reasonable.

(June 24, 2000, D.C. Law 13-127, § 603, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.04. Individualized Service Plans.

(a)(1) An ISP shall be developed for each resident prior to admission.

(2) An ISP shall be developed following the completion of the "post move-in" assessment.

(3) The ISP shall be written by a healthcare practitioner using information from the assessment.

(4) The ISP shall be developed with the resident, or surrogate, as a full partner.

(5) The ISP shall be signed by the resident, or surrogate, and a representative of the ALR.

(6) The ISP shall include a shared responsibility agreement when necessary.

(7) The ISP shall be based on such factors as:

(A) The medical, rehabilitation, and psychosocial assessment of the resident;

(B) The functional assessment of the resident; and

(C) The reasonable accommodation of resident and, if necessary, surrogate preferences.

(b) The ISP shall include the services to be provided, when and how often the services will be provided, and how and by whom all services will be provided and accessed.

(c) During the ISP development process, the ALR shall confer with the prospective resident and, if necessary, the surrogate to arrive at a mutual agreement as to the responsibilities of each party in accessing care and achieving related outcomes.

(d) The ISP shall be reviewed 30 days after admission and at least every 6 months thereafter. The ISP shall be updated more frequently if there is a significant change in the resident's condition. The resident and, if necessary, the surrogate shall be invited to participate in each reassessment. The review shall be conducted by an interdisciplinary team that includes the resident's healthcare practitioner, the resident, the resident's surrogate, if necessary, and the ALR.

(e) An ALR shall facilitate aging in place to the best of its ability with the understanding that there may be a point reached where adequate and appropriate services can not be marshalled to support the resident safely, making transfer to another setting necessary.

(June 24, 2000, D.C. Law 13-127, § 604, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.05. Shared responsibility agreements.

(a) Whenever disagreements arise as to lifestyle, personal behavior, safety, and service plans the ALR staff, resident or surrogate, and other relevant service providers shall attempt to develop a shared responsibility agreement.

(b) A shared responsibility agreements represents a tool for ALRs to recognize an individual resident's right to autonomy by respecting his or her right to make individual decisions regarding lifestyle, personal behavior, and ISPs. In some cases, a resident's decision may involve increased risk of personal harm and therefore potentially increase the risk of liability by the ALR absent an agreement between the resident and ALR concerning such decisions or actions. In such instances the ALR shall:

(1) Explain to the resident, or surrogate, why the decision or action may pose risks and suggest alternatives to the resident; and

(2) Discuss with the resident, or surrogate, how the ALR might mitigate potential risks.

(c) If, after consultation with the ALR as required by subsection (b) of this section, a resident decides to pursue a course of action, such as refusal of services, that may involve increased risk of personal harm and conflict with the ALR's usual responsibilities, the ALR shall:

(1) Describe to the resident the action or range of actions subject to negotiation; and

(2) Negotiate a shared responsibility agreement, with the resident as a full partner, acceptable to the resident and the ALR that meets all reasonable requirements implicated. The shared responsibility agreement shall be signed by the resident or surrogate and the ALR.

(June 24, 2000, D.C. Law 13-127, § 605, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.06. Resident records.

A record shall be maintained for every resident and include the following:

(1) The resident agreement required by this subchapter, including the "Resident's Rights" statement and any additional agreements;

(2) The functional assessment of ADLs;

(3) A physician's statement, including medical orders and rehabilitation plans;

(4) The ISP and any revisions thereto;

(5) All shared responsibility agreements; and

(6) Any note and comments added to the record by the ALR.

(June 24, 2000, D.C. Law 13-127, § 606, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.07. Services to be provided.

(a) An ALR shall provide or ensure the provision of the following:

(1) Twenty-four hour supervision and oversight to ensure the well-being and safety of its residents;

(2) Three nutritious and attractive meals and additional snacks, modified to individual dietary needs as necessary, on a daily basis;

(3) A variety of fresh and seasonal foods, adapted to the food habits, preferences, and physical abilities of the residents;

(4) At minimum, some assistance with ADLs and IADLs to meet the scheduled and unscheduled service needs of the residents; and

(5) Laundry and housekeeping service not provided by the resident or surrogate.

(b) An ALR shall facilitate access for a resident to appropriate health and

social services, including social work, home health agencies, nursing, rehabilitative, hospice, medical, dental, dietary, counseling, and psychiatric services.

(c) An ALR shall provide or coordinate scheduled transportation to community-based services.

(June 24, 2000, D.C. Law 13-127, § 607, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-106.08. Discharge and transfer.

(a) When a resident wishes to be discharged from an ALR, the resident or surrogate shall give 30 days written notice to the ALR.

(b) When a sudden, unexpected, and life-threatening medical emergency arises necessitating the immediate transfer of the resident to an acute care facility, the ALR shall immediately notify the surrogate and the resident's healthcare provider of the transfer. The ALR shall provide the surrogate and healthcare provider with information concerning cause of the transfer and the name and location of the acute care facility.

(c) After a resident is transferred pursuant to subsection (b) of this section, his or her return to the ALR shall be determined by the renegotiation of the ISP with the resident or surrogate, the resident's healthcare provider, and the ALR. If, in renegotiating the ISP, the interested parties determine that the resident can no longer safely reside at the ALR, discharge planning shall take place in consultation with the resident or surrogate, the resident's healthcare provider, and the ALR. Under these circumstances the ALR shall waive the 30 day notice requirement.

(d) Before a resident may be discharged on an involuntary basis, the ALR shall provide 30 days written notice to the resident and surrogate of the planned discharge, and make arrangements for the discharge in consultation with the resident, the surrogate, and the healthcare provider. Any involuntary discharge shall conform to the notice and process established in subchapter III of Chapter 10 of this title.

(e) Although an ALR shall make every effort to avoid discharge, grounds for involuntary discharge may include the following:

- (1) Failure to pay all fees and costs as specified in the contract; and
- (2) Inability of the ALR to meet the care needs of the resident as provided in the ISP.

(f) An involuntary discharge shall be canceled upon the occurrence of one of the following:

- (1) The payment of all monies owed at any time prior to discharge; or
- (2) The negotiation of a new ISP.

(June 24, 2000, D.C. Law 13-127, § 608, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter VII. Staffing and Training.

§ 44-107.01. Staffing standards.

(a) An ALR shall be supervised by an ALA who shall be responsible for all personnel and services within the ALR.

(b) The ALA shall ensure that each resident has access to appropriate medical, rehabilitation, and psychosocial services as established in the ISP and that there is appropriate oversight, monitoring, and coordination of all components of the ISP, including necessary transportation and the delivery of needed supplies.

(c)(1) An ALA shall be at least 21 years of age.

(2) An ALA shall possess at least a high school diploma or general equivalency diploma ("G.E.D.") or have served as an operator or administrator of a licensed community residence facility ("CRF") in the District of Columbia for at least one of the past 3 years in which the CRF has met minimum legal standards. An ALA employed on or after June 24, 2000 shall have at least a high school diploma or G.E.D. and have served as a direct care provider or administrator for at least one of the past three years.

(3) An ALA shall possess satisfactory knowledge of the following:

- (A) The philosophy of assisted living;
- (B) The health and psychosocial needs of residents;
- (C) The resident assessment process;
- (D) The development and use of ISPs;
- (E) Medication administration, including cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;
- (F) The provision of assistance with activities of daily living and personal hygiene;
- (G) Residents' rights;
- (H) Fire and life safety codes;
- (I) Infection control, including standard precautions to prevent infection;
- (J) Food safety and sanitation;
- (K) First aid and cardiopulmonary resuscitation (CPR);
- (L) Emergency disaster plans;
- (M) Human resource management, including staff employment, orientation and training, employee rights and protection against discrimination, harassment, and wrongful discharge; and
- (N) Financial management.

(d) An ALA shall:

(1) Employ staff and develop a staffing plan in accordance with this chapter and based upon the following criteria to assure the safety and proper care of residents in the ALR:

- (A) The health, mental condition, and psychosocial needs of the residents;
- (B) The fulfillment of the 24-hours-a-day scheduled and unscheduled needs of the residents;

- (C) The size and layout of the ALR;
 - (D) The capabilities and training of the employees; and
 - (E) Compliance with all of the minimum standards in this chapter;
- (2) Assure that sufficient staff who know how to implement the ALR's evacuation plan and emergency management plan are on the premises at all times to implement emergency procedures;
- (3) Assure that each person employed by the ALR maintains personal cleanliness and hygiene;
- (4) Develop written job descriptions for staff who are responsible for providing personal services to residents and provide a copy of the job description to the employee;
- (5) Assign duties to each staff member consistent with his or her level of education, preparation, and experience;
- (6) Assure that there is at least one staff member within the ALR at all times who is certified in first-aid and CPR;
- (7) Assure that all members of the staff are mentally and physically capable of performing their assigned duties;
- (8) Assure that each employee has a background check pursuant to federal and District law executed at the time of initial employment;
- (9) Assure that members of the staff appear to be free from apparent signs and symptoms of communicable disease, as documented by a written statement from a healthcare practitioner;
- (10) Remove from duty any staff member who is found to have, or is suspected of having, a communicable disease or is mentally or physically incapable of performing her or his duties until the ALA determines that such impairment no longer exists;
- (11) Maintain personnel records for each employee that include documentation of criminal background checks, statements of health status, and documentation of the employee's communicable disease status;
- (12) Assure that, during periods of temporary absence of the ALA when residents are on the premises, a staff member who is at least 18 years of age and meets the staffing standards of the ALA required by this section shall assume responsibilities of the ALA; and
- (13) Complete the training required by § 44-107.02 and 12 additional hours of training, annually, conducted by a nationally recognized organization that possesses experience in training staff in dementia care, such as the Alzheimer's Disease and Related Disorders Association, on managing residents who are living with cognitive impairments.
- (e) Newly hired staff shall have 30 days to document their communicable disease status. For the purposes of this subsection, "newly hired staff" means any individual who is hired by an ALR regardless of the individual's previous work experience. An employee who is transferring from one ALR to another ALR that is under the same management or ownership, without break in service, shall not be considered newly hired staff.
- (f) Employees shall be required on an annual basis to document freedom from tuberculosis in a communicable form.
- (g) The staff shall:

- (1) Be at least 21 years of age;
- (2) Possess current and appropriate licensure and certifications as required by law;
- (3) Possess sufficient skills, education, training, and experience to meet the needs of the residents;
- (4) Subject to their assigned duties and responsibilities, possess a satisfactory knowledge of the resident assessment process, use of ISPs, resident health and psychosocial needs, and resident rights;
- (5) Complete initial and ongoing training pertaining to the philosophy of care in ALRs and meeting the personal care needs of residents; and
- (6) Not work unsupervised without satisfactory completion of the training required by § 44-107.02.

(h) Staff who have not completed the training required by § 44-107.02 must work at all times under the supervision of a staff member who has satisfactorily completed this training.

(i) For the purposes of subsection (g)(5) of this section “ongoing training” means a regularly scheduled program of staff training designed by the ALR to assure that all staff who have direct resident contact possess the skills necessary to provide high quality services in a manner appropriate to the philosophy of assisted living and includes staff training in how to monitor changes in a resident’s condition, including physical and cognitive assessments.

(June 24, 2000, D.C. Law 13-127, § 701, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-107.02. Staff training.

(a) All staff shall be properly trained and be able to demonstrate proficiency in the skills required to effectively meet the requirements of this chapter. Prior to the date of hire, an employee must meet or possess one of the following criteria:

- (1) Be certified as a nurse’s aide;
- (2) Be certified as a home care aide as defined in the Medicare criteria in OBRA 1987;
- (3) Be properly trained by virtue of holding current licenses in a healthcare related field;
- (4) Be properly trained under a plan approved by the Mayor which covers the following topics, for a minimum of 40 hours:
 - (A) Delivering care for the bed-bound resident, including bathing, feeding, shampooing, dressing, positioning, and toileting;
 - (B) Use of the first aid kit and knowledge of its location;
 - (C) Confidential treatment of personal information;
 - (D) Procedures for detecting and reporting suspected abuse, neglect, or exploitation of residents;
 - (E) Managing difficult aggressive behavior;
 - (F) Advanced body mechanics;

(G) Communicating with adults, including those with communication deficits such as aphasia, hearing loss, loss of eyesight, and cognitive impairments;

(H) Recognizing the signs and symptoms of dementia;

(I) Caring for the cognitively impaired with such behaviors as wandering, repetitive questions, and confusion;

(J) Techniques for assisting residents in overcoming transfer trauma;

(K) Awareness of resident's "change in condition", including depression and ability to report changes to the appropriate staff according to the protocol of the ALR;

(L) Basic competence in housekeeping, laundry, food handling, and meal preparation; and

(M) Any specialized training for special needs not covered through the basic training.

(b) Within 7 days of employment, an ALR shall train a new member of its staff as to the following:

(1) Their specific duties and assignments;

(2) The purpose and philosophy of the ALR;

(3) The services provided;

(4) The daily routines;

(5) The rights of residents;

(6) The emergency procedures and disaster drills and techniques of complying, including evacuating residents when applicable;

(7) Elementary body mechanics, including proper lifting and in place transfer;

(8) Choking precautions and airway obstruction, including the Heimlich Maneuver; and

(9) Infection control.

(c) After the first year of employment, and at least annually thereafter, a staff member shall complete a minimum total of 12 hours of in-service training in the following:

(1) Emergency procedures and disaster drills;

(2) Rights of residents;

(3) Four hours covering cognitive impairments in an in-service training approved by a nationally recognized and creditable expert such as the Alzheimer's Disease and Related Disorder Association; and

(d) On an annual basis, the ALA shall complete 12 additional hours of training on cognitive impairments approved by a nationally recognized organization with expertise in dementia such as the Alzheimer's Disease and Related Disorders Association.

(June 24, 2000, D.C. Law 13-127, § 702, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter VIII. Resident Assessment.

§ 44-108.01. General.

A resident assessment required by this subchapter shall form the basis for the development of the resident's service plan, and shall be completed for all routine admissions to the ALR.

(June 24, 2000, D.C. Law 13-127, § 801, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-108.02. Medical, rehabilitation, and psychosocial assessment.

(a) A medical, rehabilitation, and psychosocial assessment of the resident shall be completed within 30 days prior to admission.

(b) The ALR shall maintain resident information obtained from a standardized physician's statement approved by the Mayor. The information shall include a description of the applicant's current physical condition and medical status relevant to defining care needs, and the applicant's psychological and cognitive status, if so indicated during the medical assessment.

(c) The assessment shall be based on an examination by the prospective resident's primary, licensed healthcare practitioner within 30 days prior to admission. The information obtained from the examination shall include at least the following:

- (1) The individual's medical history with a recent evaluation;
- (2) Any significant medical conditions affecting function, including the individual's ability for self-care, cognition, behavior, and psychosocial activities;
- (3) Presence of allergies;
- (4) Confirmation that the applicant is free from communicable TB and from other active, infectious, and reportable communicable diseases;
- (5) Current medication profile and projected and other needed medications, treatments and service; review of nonprescription drugs and review of possible adverse interactions;
- (6) Current dietary needs and restrictions;
- (7) Medically necessary limitations or precautions; and
- (8) Monitoring or tests that may need to be performed or followed up after admission.

(June 24, 2000, D.C. Law 13-127, § 802, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-108.03. Functional assessment.

Within 30 days prior to admission, the facility shall collect, on a standard-

ized form approved by the Mayor, the following information regarding each applicant:

- (1) Level of functioning in activities of daily living including bathing, dressing, grooming, eating, toileting, and mobility;
- (2) Level of support and intervention, including any special equipment and supplies, required to compensate for the individual's deficits in activities of daily living;
- (3) Current physical or psychological symptoms of the individual requiring monitoring, support, or other intervention by the ALR;
- (4) Capacity of the individual for making personal and healthcare related decisions;
- (5) Presence of disruptive behavior or behavior which presents a risk to the physical or emotional health and safety of self or others;
- (6) Social factors, including:
 - (A) Significant problems with family circumstances and personal relationships;
 - (B) Spiritual status and needs; and
 - (C) Ability to participate in structured and group activities and the resident's current involvement in such activities.

(June 24, 2000, D.C. Law 13-127, § 803, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-108.04. Short-term residential care.

For individuals who will stay in the ALR no longer than 30 days, only the following information is required for admission to the ALR:

- (1) An analysis of the individual's current physical condition, medical status, and functional assessment as set out in this subchapter; and
- (2) A resident agreement in accordance with this chapter.

(June 24, 2000, D.C. Law 13-127, § 804, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-108.05. Emergency placement.

A resident admitted as an emergency placement, not to exceed 14 days, must comply with admission, physical examination, and assessment requirements of this chapter.

(June 24, 2000, D.C. Law 13-127, § 805, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter IX. Medication Management.

§ 44-109.01. Responsibilities of the ALR personnel in medication management.

An ALA shall ensure that an initial assessment identifies whether a resident:

- (1) Is capable of self-administering his or her own medications;
- (2) Is capable of self-administering his or her own medication, but requires a reminder to take medications or requires physical assistance with opening and removing medications from the container, or both; or
- (3) Requires that medications be administered by a TME or a licensed nurse.

(June 24, 2000, D.C. Law 13-127, § 901, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-109.02. Pre-admission medication management assessment.

Within 30 days prior to admission, the ALR shall consult with the prospective resident's healthcare practitioner regarding:

- (1) The prospective resident's current medication profile, including a review of nonprescription drugs;
- (2) Possible adverse interactions;
- (3) Common expected or unexpected side effects; and
- (4) The potential that such medications have to act as chemical restraints.

(June 24, 2000, D.C. Law 13-127, § 902, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-109.03. On-site medication review.

The ALR shall arrange for an on-site review by a registered nurse every 45 days to:

- (1) Supervise the administration of medications by Trained Medication Employees;
- (2) Assess the resident's response to medication; and
- (3) Assess the resident's ability to continue to self-administer his or her medications.

(June 24, 2000, D.C. Law 13-127, § 903, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-109.04. Medication storage.

(a) The ALA shall provide a secured space for medication storage with access to a sink and cold storage in the same area. Space for necessary medical supplies and equipment shall be provided.

(b) The storage area shall be kept locked when not in use.

(c) The storage area shall be used only for storage of medications and medical supplies.

(d) The key to the storage area shall be kept on the person of the employee on duty who is responsible for administering the medications.

(e)(1) All medications shall be kept in their original packaging and shall be properly labeled and identified.

(2) The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, healthcare practitioner's name, prescription number, name and strength of drug, lot number, quantity, date of issue, expiration date, manufacturer's name, if generic, directions for use, and cautionary or accessory information. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.

(3) All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary or accessory labels, in accordance with U.S.P. regulations. Original manufacturer's containers shall be labeled with at least the resident's name. The name label shall not obstruct any of the aforementioned information.

(4) In the "unit of use" distribution system, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include product name, strength, lot number, expiration date, and the manufacturer's distributor's name.

(5) Single use and disposable items shall not be reused.

(6) No stock supply of prescription medications shall be maintained, unless prior approval is obtained from the Mayor.

(7) Discontinued or expired medications shall be destroyed within 30 days in the ALR, or, if unopened and properly labeled, returned to the pharmacy. All medication destroyed in the ALR shall be witnessed and documented by two persons, one of whom shall be the ALA or the ALA designee.

(8) Residents who self-administer may keep and use prescription and nonprescription medications in their units as long as they keep them secured from other residents.

(June 24, 2000, D.C. Law 13-127, § 904, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-109.05. Medication administration.

(a) Licensed nurses, physicians, physician assistants, and TMEs may ad-

minister medications to residents or assist residents with taking their medications.

(b)(1) Each resident shall be identified prior to drug administration.

(2) Drugs prescribed for one resident shall not be administered to another resident.

(3) The TME shall report drug errors to the healthcare practitioner or licensed nurse and shall document the incident in the resident's record.

(June 24, 2000, D.C. Law 13-127, § 905, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-109.06. Medication management training program.

(a) The Mayor shall develop medication management training courses which shall be approved by the Board of Nursing. The medication administration training program shall include instruction in the following areas:

(1) Cuing, coaching, and monitoring residents who self-administer medications with or without assistance;

(2) Pharmacology;

(3) Terminology related to medication;

(4) Procedures and precautions in administering medication;

(5) Types of medication;

(6) Actions, interactions, and effects of medication;

(7) Administration of medication in emergency or life-threatening circumstances;

(8) Recordkeeping, storage, handling, and disposal requirements for medications;

(9) Rights of residents;

(10) Monitoring of vital signs;

(11) Federal and District of Columbia laws governing medication; and

(12) Reference sources related to medication.

(b) The Mayor shall maintain a list of approved medication administration courses for the training of persons to be certified by the District of Columbia as TMEs.

(c) In order to maintain certification, every 2 years a TME shall successfully complete a clinical update or refresher course approved by the Mayor.

(d) The ALA shall document completion of the medication training course in TME's personnel file.

(June 24, 2000, D.C. Law 13-127, § 906, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-109.07. Medication control.

(a) Each resident shall be identified prior to drug administration.

(b) Drugs prescribed for one resident shall not be administered to another resident.

(c) Staff shall report drug errors and adverse drug reactions immediately to the ALA or ALA designee who shall report, as appropriate, to the doctor, prescriber, pharmacist, resident, and resident's surrogate and shall document the incident in the resident's record.

(d) A unit drug compliance package (blister or bubble or unit dose package) shall be developed and implemented where feasible.

(e) Medications shall be refrigerated separately from lab specimens and food.

(June 24, 2000, D.C. Law 13-127, § 907, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter X. Facility Regulations.

§ 44-110.01. General conditions.

(a) An ALR shall meet applicable zoning, building, housing, sewer, water, fire prevention codes, rules, and regulations of the District of Columbia.

(b) An ALR shall maintain all structures, installed equipment, grounds, and individual living units in good repair and operable.

(c) An ALR may be classified as a residential occupancy and may be located in a single or multi-family dwelling.

(June 24, 2000, D.C. Law 13-127, § 1001, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.02. Fire safety.

An ALR shall comply with the Life Safety Code of the National Fire Protection Association, NFPA 101, 1997 edition as follows:

(1) An ALR shall be in compliance with Chapter 22, New Residential Board and Care Occupancies, Life Safety Code of the National Fire Protection Association; and

(2) An existing community residence facility that is converting to an ALR shall be in compliance with Chapter 23, Existing Residential Board and Care Occupancies, of the Life Safety Code of the National Fire Protection Association.

(June 24, 2000, D.C. Law 13-127, § 1002, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.03. General building exterior.

(a) An ALR shall ensure that the exterior of its facility, including walkways,

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yards, porches, chimney, gutters, downspouts, paintable surfaces, and accessory buildings are maintained structurally sound, sanitary, and in good repair.

(b) An ALR that provides services to wheelchair-bound residents, shall make reasonable accommodations to render the ALR accessible to residents who are wheel-chair bound through the installation of a chair lift, curbscuts, an exterior ramp, or like accommodations.

(June 24, 2000, D.C. Law 13-127, § 1003, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.04. General building interior.

(a) An ALR shall ensure that the interior of its facility including walls, ceilings, doors, windows, equipment, and fixtures are maintained structurally sound, sanitary, and in good repair.

(b) An ALR shall ensure that floors and stairways provide a clean, slip-resistant, and safe surface, free of tripping hazards.

(c) An ALR shall install and maintain assist handrails or grab bars, whenever practicable, on each side of interior stairways and on one side of corridors and in bathrooms.

(d) An ALR shall provide common areas for social and recreational use totaling at least 35 square feet per resident for living, dining, therapy, and recreational activities.

(June 24, 2000, D.C. Law 13-127, § 1004, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.05. Accessibility.

An ALR that provides services for wheelchair-bound residents, shall insure that:

(1) Doorways and hallways provide a clear opening of at least 32 inches; and

(2) Thresholds exceeding ½ inch are modified to provide a 1:12 maximum slope.

(June 24, 2000, D.C. Law 13-127, § 1005, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.06. Bathrooms.

(a) An ALR shall ensure that there is one full bathroom, for every 6 residents, including live-in family or staff. Additional full or half baths shall be available to non-live-in staff. No resident shall be required to traverse more than one flight of stairs to access a bathroom and appropriate accommodations shall be made for residents who are unable to climb stairs.

(b) When applicable, bathrooms shall contain adequate space and strategically located grab bars to allow wheelchair-bound residents to utilize toilets, tubs, showers, and wash basins without traversing a stair way.

(c) An ALR shall insure that the temperature of the hot water at all taps to which residents have access is controlled by the use of thermostatically controlled mixing valves or by other means, including control at the source, so that the water temperature does not exceed 110 degrees Fahrenheit.

(June 24, 2000, D.C. Law 13-127, § 1006, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.07. Health, light, and ventilation.

(a) An ALR shall ensure that each facility is lighted and ventilated in accordance with Title 12 of the District of Columbia Municipal Regulations (District of Columbia Construction Codes Supplement of 1992). Artificial night lights for corridors and exterior security lighting shall be installed.

(b) Each room shall have either a functioning ceiling light fixture or another source of artificial light.

(c) An ALR shall ensure that heating and air conditioning equipment is maintained to ensure that:

(1) During waking hours, an interior temperature throughout the facility of at least 72 degrees Fahrenheit when outside temperatures are 65 degrees Fahrenheit or below, is maintained throughout the facility;

(2) During sleeping hours, an interior temperature of at least 68 degrees Fahrenheit, when outside temperatures are 65 degrees Fahrenheit or below, is maintained throughout the facility;

(3) For individual units, heating and air conditioning shall be maintained at a temperature which is comfortable for the individual resident, whenever practicable; and

(4) When inside temperature exceeds 85 degrees Fahrenheit, mechanically cooled air shall be used in areas of the building used by residents with no inside area used by the residents allowed to exceed 90 degrees Fahrenheit.

(June 24, 2000, D.C. Law 13-127, § 1007, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.08. Bedrooms.

(a) An ALR located in an existing building shall ensure that bedrooms provide at least 70 square feet of habitable space for single occupancy resident units and 100 square feet of habitable space in double occupancy resident units. Each bedroom shall have adequate dresser and closet or wardrobe space for residents' seasonal clothing and personal belongings. A secure storage space in a resident's unit shall be made available if requested by the resident.

(b) Any ALR located in a building newly constructed or renovated after June

24, 2000 shall ensure that bedrooms provide at least 80 sq. ft. of habitable space for single occupancy and 120 sq. ft. of habitable space for double occupancy.

(c) An ALR shall ensure that each resident has an adult size bed with clean comfortable mattress and extra linens. Additional furnishings, such as night stand, desk, chair, mirror, waste basket, etc., shall be made available, subject to residents wishes and tastes. Beds in double occupancy bedrooms must be at least 3 feet apart. Residents may choose to provide their own furnishings after being made aware of the furnishings that the facility is required to provide. All furnishings must meet the Fire Safety Code and be maintained in good repair.

(June 24, 2000, D.C. Law 13-127, § 1008, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.09. Kitchen.

An ALR shall provide a kitchen that has the following:

- (1) Storage, refrigerator, or freezer space for perishable and nonperishable foods;
- (2) Food preparation areas with cleanable surfaces;
- (3) Equipment to prepare and serve food at safe and palatable temperatures; and
- (4) Sufficient equipment and staffing to be in compliance with section 1116 of Title 14 of the District of Columbia Municipal Regulations, as those regulations are applicable to boarding houses.

(June 24, 2000, D.C. Law 13-127, § 1009, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.10. Laundry.

An ALR shall provide an on-site laundry facility for use of staff for residents personal laundry. All laundry shall be processed and handled in a manner to prevent the spread of infection by:

- (1) Separate processing and storage of incontinent items; and
- (2) Sanitizing by hot water and appropriate chemical agents.

(June 24, 2000, D.C. Law 13-127, § 1010, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

§ 44-110.11. Special requirements for ALRs with 17 beds or more.

(a) An ALR that provides sleeping accommodations for more than 16 residents shall comply with this subchapter.

(b) The ALR may be free-standing or a distinct part of an institutional occupancy.

(c) The ALR shall be responsible for providing or coordinating personalized care to individuals who reside in their own living units (which may include dually occupied units) which may or may not include a kitchenette or living rooms and which contain bedrooms.

(d) Living units may or may not include bathrooms; except that, no more than 4 residents shall share a common bathroom. Shared bathrooms shall be in close proximity and on the same floor as living units or bedrooms.

(e) Living units or bedrooms may be locked at the discretion of the residents, except when the resident's assessment documents indicate otherwise.

(f) An ALR shall have a central dining room, living room or parlor, and common activity center (which may also serve as living rooms or dining rooms).

(g) An ALR providing 17 beds or more shall be in compliance with section 512 of Title 12 of the District of Columbia Municipal Regulations, making the facility accessible to residents with physical disabilities and aged residents.

(h) An ALR shall ensure that all food is prepared and served in accordance with Chapters 20 through 24 of Title 23 of the District of Columbia Municipal Regulations and shall organize plumbing facilities to insure that food is processed and served so as to be safe for human consumption.

(June 24, 2000, D.C. Law 13-127, § 1011, 47 DCR 2647; Apr. 24, 2007, D.C. Law 16-305, § 68(b), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in subsec. (g), substituted "residents with physical disabilities" for "physically handicapped".

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 44-102.01.

§ 44-110.12. Certificate of Need.

A Certificate of Need shall not be required for Assisted Living Residences licensed under this chapter.

(June 24, 2000, D.C. Law 13-127, § 1012, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter XI. Insurance.

§ 44-111.01. Insurance for Assisted Living Residences.

(a) Each ALR shall carry insurance for at least the following:

(1) Hazards (fire and extended coverage) in the amount of \$500.00 per resident to protect belongings with a minimum of \$2,000 of coverage per facility;

(2) Premises, personal injury, and products liability at least in the following amounts:

(A) For one to 2 beds, \$100,000 per occurrence;

(B) For 3 to 9 beds, \$300,000 per occurrence; and

(C) For 10 or more beds, \$500,000 per occurrence; and

(3) Incidental malpractice coverage specific to the duties required of an ALA manager or any staff member in the amount of at least \$100,000.

(b) If an ALR is not owned by the operator or manager, the operator or manager shall obtain proof of the owner's premises liability coverage, such as a certificate of standard landlord coverage, or shall place the owner on the operator's or manager's policy as an additional named insured.

(June 24, 2000, D.C. Law 13-127, § 1101, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter XII. Appeals.

§ 44-112.01. Appeals from actions of the Mayor.

A person or licensee aggrieved by an action of the Mayor under this chapter may appeal the Mayor's action by filing a request for hearing as provided in § 44-505.

(June 24, 2000, D.C. Law 13-127, § 1201, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Subchapter XIII. Rulemaking.

§ 44-113.01. Rulemaking by the Mayor.

The Mayor shall promulgate proposed rules where necessary to supplement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed approved.

(June 24, 2000, D.C. Law 13-127, § 1301, 47 DCR 2647.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01. **Delegation of Authority.** — Delegation of Authority Pursuant to D.C. Law 13-127, the "Assisted Living Residence Regulatory Act of 2000", see Mayor's Order 2005-137, September 27, 2005 (53 DCR 155).

Subchapter XIV. Applicability.

§ 44-114.01. Implementation. [Repealed].

Repealed.

(June 24, 2000, D.C. Law 13-127, § 1501, 47 DCR 2647; Aug. 16, 2008, D.C. Law 17-219, § 7024, 55 DCR 7598.)

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-101.01.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed

by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 7024 of D.C. Law 17-219 provided that subtitle J of title VII of the act may be cited as the “Elimination of Subject-to-Appropriations Contingencies Amendment Act of 2008”.

CHAPTER 1A. CONTINUING CARE RETIREMENT COMMUNITIES.

Sec.	Sec.
44-151.01. Definitions.	44-151.11. Rehabilitation or liquidation.
44-151.02. License.	44-151.12. Investigations and subpoenas.
44-151.03. Revocation of license.	44-151.13. Examinations; financial statements.
44-151.04. Sale or transfer of ownership.	44-151.14. Civil liability.
44-151.05. Disclosure statement.	44-151.15. Criminal penalties.
44-151.06. Contract for continuing care; specifications.	44-151.16. Other licensing or regulation.
44-151.07. Annual disclosure statement revision.	44-151.17. Rulemaking authority; reasonable time to comply with rules.
44-151.08. Operating reserves.	44-151.18. Continuing Care Retirement Community Regulatory and Supervision Trust Account.
44-151.09. Escrow, collection of deposits.	
44-151.10. Right to organization.	

§ 44-151.01. Definitions.

For the purposes of this chapter, the term:

(1) “Assisted living” means an assisted living residence as defined in § 44-102.01(4).

(2) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) “Continuing care facility” means a building, or complex of buildings under one management at one or more sites, if continuing care services are provided.

(4) “Continuing care services” means the continuum of care, ranging from independent living to assisted living to nursing home care, provided pursuant to a contract for the life of the individual purchasing the services or for a period of not less than one year.

(5) “Entrance fee” means a payment that assures a resident a place in a facility for a term of at least a year or for life.

(6) “Hazardous financial condition” means a provider is insolvent or in imminent danger of becoming insolvent.

(7) “Independent living” means an individual residing in a continuing care facility’s living unit with no need for specialized health care services beyond general preventative health care.

(8) “Living unit” means a room, apartment, cottage, or other area within a continuing care facility set aside for the exclusive use or control of one or more identified residents.

(9) “Nursing home” means a nursing home as defined in § 44-501(3).

(10) “Provider” means the promoter, developer, or owner, whether a natural person, partnership, or other unincorporated association, however organized, trust, or corporation, whether operated for profit or not, or any other person, that solicits or undertakes to provide continuing care services.

(11) “Resident” means a purchaser of, a nominee of, or a subscriber to, a continuing care contract.

(Apr. 5, 2005, D.C. Law 15-270, § 101, 52 DCR 799.)

Legislative history of Law 15-270. — Law 15-270, the “Continuing Care Retirement Communities Act of 2004”, was introduced in Council and assigned Bill No. 15-94, which was

referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by

the Mayor on December 29, 2004, it was assigned Act No. 15-661 and transmitted to both Houses of Congress for its review. D.C. Law 15-270 became effective on April 5, 2005.

§ 44-151.02. License.

(a) No provider shall engage in the business of offering or providing continuing care in the District without a license from the Department of Insurance, Securities, and Banking indicating that the provider meets the financial requirements under this chapter for engaging in the business of providing continuing care services.

(b) No provider shall be licensed by the Department of Insurance, Securities, and Banking unless the applicant demonstrates to the satisfaction of the Commissioner that it has:

(1) A business plan that reasonably demonstrates that it shall be able financially to provide the services that it contracts to provide;

(2) Sufficient capitalization and predictable cash flow to carry out its business plan; and

(3) Experienced managers and qualified financial experts associated with the organization who are capable of ensuring the proper operation of the facility.

(c) Each provider shall file with the Commissioner an application for a license on forms prescribed by rule and within a period of time prescribed by rule. The application shall include the disclosure statement meeting the requirements of this chapter and other financial and facility development information required by the rule. The application for a license shall be accompanied by an application fee established by rule.

(d) Upon receipt of the complete application for a license in proper form, the Commissioner shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the Commissioner shall enter an order issuing the license or rejecting the application. If the Commissioner fails to act within 90 days of the notice of filing, the application shall be deemed denied.

(e) If the Commissioner determines that any of the requirements of this chapter have not been met, the Commissioner shall notify the applicant of any defects in the application and the applicant shall have 30 days in which to correct the application. If the requirements are not met within the time allowed, the Commissioner may enter an order rejecting the application, which order shall include the findings of fact upon which the order is based and which shall not become effective until 20 days after the end of the 30-day period. During the 20-day period, the applicant may petition for reconsideration of the application and shall be entitled to a hearing.

(f) The provider shall provide to the Commissioner the report of an actuary that:

(1) Estimates the capacity of the provider to meet its contractual obligation to the residents; or

(2) Gives consideration to expected rates of mortality and morbidity, expected refunds, and expected capital expenditures in accordance with

standards promulgated by the American Academy of Actuaries, within a 5-year forecast period.

(g) Any license issued pursuant to this section for a provider of continuing care services shall be issued as a Financial Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(h) Nothing in this chapter shall require the Commissioner to review the disclosure statement and the issuance of a license under this chapter shall not constitute an approval of the disclosure statement or of any of the statements therein.

(Apr. 5, 2005, D.C. Law 15-270, § 102, 52 DCR 799; Mar. 2, 2007, D.C. Law 16-191, § 67, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (g), validated a previously made technical correction.

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 44-151.03. Revocation of license.

(a) The license of a provider shall remain in effect until revoked after notice and hearing, upon written findings of fact, that the provider has:

(1) Willfully violated any provision of this chapter or of any related rule or order;

(2) Failed to file an annual disclosure statement or standard form as required by law;

(3) Failed to deliver to prospective residents the required disclosure statements;

(4) Delivered to prospective residents a disclosure statement that makes an untrue statement or omits a material fact and the provider, at the time of the delivery of the disclosure statement, had actual knowledge of the misstatement or omission;

(5) Failed to comply with the terms of a cease and desist order; or

(6) Been or is in imminent danger of being determined to be in a hazardous financial condition.

(b) The Commissioner may suspend the license of a provider, after notice and hearing, for any of the violations in subsection (a) of this section and set forth the conditions necessary to correct the violations, including whether a provider can enter into new continuing care service contracts while suspended.

(c) The Commissioner may, in lieu of suspension or revocation of the license of a provider issued pursuant to this chapter, after notice and hearing, order a provider to take corrective action or levy an administrative penalty in an amount not more than \$50,000 per violation.

(d) Upon review of an order of the Commissioner revoking a license, a court may determine whether a factual finding by the Commissioner is clearly erroneous.

(e) If there is good cause to believe that the provider is guilty of a violation for which revocation could be ordered, the Commissioner may first issue a cease and desist order. The cease and desist order shall be subject to notice and hearing within 10 days of the order. If the cease and desist order is not or cannot be effective in remedying the violation, the Commissioner may, after notice and hearing, issue an order that the license be revoked and surrendered. The provider may accept new applicant funds while the revocation order is under appeal provided the funds are escrowed pending results of the appeal.

(Apr. 5, 2005, D.C. Law 15-270, § 103, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.04. Sale or transfer of ownership.

(a) No provider or other owning entity shall sell or transfer ownership of the facility, or enter into a contract with a third-party provider for management of the facility, unless the transfer or contract has been approved by the Commissioner. The Commissioner shall have 90 days from receipt of the transfer documents or contract in which to review and to approve or disapprove the transfer or contract. If the transfer or sales contract or third-party management contract is approved, the new provider or third-party manager shall have 90 days in which to meet the licensing requirements and to obtain a license to operate the facility in their own name. The Commissioner, with the consent of the applicant, may extend this 90-day period for up to an additional 60 days.

(b) Upon receipt of an application for the sale or transfer of ownership of the facility or for execution of a contract with a third-party provider for management of the facility, the Commissioner shall, within 10 business days, issue a notice of filing to the applicant. Within 90 days of the notice of filing, the Commissioner shall enter an order issuing the license or rejecting the application. If the Commissioner fails to act within 90 days of the notice of filing, the application shall be deemed denied.

(Apr. 5, 2005, D.C. Law 15-270, § 104, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.05. Disclosure statement.

(a) At least 30 days prior to the execution of a contract to provide continuing care, or 30 days prior to the transfer of any money or other property to a provider by or on behalf of a prospective resident, whichever occurs first, the provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into. This 30-day period may be waived at the sole request of the prospective resident. The text of the disclosure statement shall contain at least:

(1) The name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity;

(2) The names and business addresses of the officers, directors, trustees, managing general partners, any person having a 10% or greater equity or beneficial interest in the provider, and any person who shall be managing the facility on a day-to-day basis, and a description of these persons' interests in or occupations with the provider;

(3) The following information on all persons named in response to paragraph (2) of this subsection:

(A) A description of the business experience, if any, of this person, in the operation or management of similar facilities;

(B) The name and address of any professional service firm, association, trust, partnership, or corporation in which the person has a 10% or greater interest and which it is presently intended shall currently or in the future provide goods, leases, or services to the facility, or to residents of the facility, including a description of the goods, leases, or services; and

(C) A description of any matter in which the person:

(i) Has been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(ii) Is subject to a currently effective injunctive or restrictive court order, or within the past 5 years, had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency or department, if the order or action arose out of or related to business activity of health care, including actions affecting a license to operate a foster care facility, nursing home, retirement home, home for aged, or facility subject to this chapter or a similar law in another state;

(4) A statement as to whether the provider is, or is not, affiliated with a religious, charitable, or other nonprofit organization, the extent of the affiliation, if any; the extent to which the affiliate organization shall be responsible for the financial and contract obligations of the provider; and the provision of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.), if any, under which the provider or affiliate is exempt from the payment of income tax;

(5) The location and description of the physical property of the facility, existing or proposed, and to the extent proposed, the estimated completion date, whether construction has begun, and the contingencies subject to which construction may be deferred;

(6) The services provided or proposed to be provided pursuant to the contracts for continuing care at the facility, including the extent to which medical care is furnished, and a statement of which services are included for specified basic fees for continuing care and which services are made available at or by the facility at extra charge;

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any, which description shall include:

(A) A statement of the fees that shall be charged if the resident marries while at the facility, and a statement of the terms concerning the entry of a spouse or non-spouse to the facility and the consequences if the spouse or non-spouse does not meet the requirements for entry;

(B) The circumstances under which the provider may discharge or evict a resident for failure or inability to pay any amount due under the contract or for other violations of the contract;

(C) The terms and conditions under which a contract for continuing care at the facility may be canceled by the provider or by the resident, and the conditions, if any, under which all or any portion of the entrance fee or any other fee shall be refunded if the contract is cancelled by the provider or by the resident or if the resident dies prior to or following occupancy of a living unit;

(D) The conditions under which a living unit occupied by a resident may be made available by the facility to a different or new resident other than on the death of the prior resident; and

(E) The manner by which the provider may adjust periodic charges or other recurring fees and the limitations on these adjustments, if any, if the facility is already in operation, or if the provider or manager operates one or more similar continuing care locations within the District, tables shall be included showing the frequency and average dollar amount of each increase in periodic charges, or other recurring fees at each facility or location for the previous 5 years, or such shorter period as the facility or location may have been operated by the provider or manager);

(8) The health and financial condition required for an individual to be accepted as a resident and to continue as a resident once accepted, including the effect of any change in the health or financial condition of a person between the date of entering into a contract for continuing care and the date of initial occupancy of a living unit by the person;

(9) The provisions that have been made or shall be made to provide reserve funding or security to enable the provider to perform its obligations fully under contracts to provide continuing care at the facility, including the establishment of escrow accounts, trusts, or reserve funds, the manner in which these funds shall be invested, and the names and experience of any individuals in the direct employment or on the board of directors of the provider who shall make the investment decisions;

(10) Financial statements of the provider, certified by an independent certified public accountant as of the end of the most recent fiscal year or such shorter period of time as the provider shall have been in existence; provided, that if the provider's fiscal year ended more than 120 days prior to the date of the disclosure statement, interim financial statements as of a date not more than 90 days prior to the date of the statement shall be included, but need not be certified by an independent certified public accountant;

(11) If the facility has had an actuarial report prepared within the prior 2 years of the date of the disclosure statement, the summary of a report of an actuary that estimates the capacity of the provider to meet its contractual obligations to the residents;

(12) Financial forecasts for the facility for the next 5 years, including a balance sheet, a statement of operations, a statement of cash flows, and a statement detailing all significant assumptions, compiled by an independent certified public accountant;

(13) The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care;

(14) Proposed or development stage facilities shall additionally provide:

(A) The summary of the report of an actuary estimating the capacity of the provider to meet its contractual obligation to the residents;

(B) Narrative disclosure detailing all significant assumptions used in the preparation of the forecast financial statements, including:

(i) Details of any long-term financing for the purchase or construction of the facility, including interest rate, repayment terms, loan covenants, and assets pledged;

(ii) Details of any other funding sources, including the provider of the funds and other funding sources, that the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care;

(iii) The total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations, and anticipated accounting methods used in the recognition of revenues from, and expected refunds of, life occupancy fees;

(iv) A description of any equity capital to be received by the facility;

(v) The cost of the acquisition of the facility or, if the facility is to be constructed, the estimated cost of the acquisition of the land and construction cost of the facility;

(vi) Related costs, such as financing any development costs that the provider expects to incur or become obligated for prior to the commencement of operations;

(vii) The marketing and resident acquisition costs to be incurred prior to commencement of operations;

(viii) A description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services; and

(ix) Whether there are any plans anticipated to use any funds or to pledge any assets of this facility in the purchase or construction of any other facility or the purchase of any property not a part of this facility and for the purposes of the residents of this facility;

(15) Any other material information concerning the facility or the provider necessary to make the disclosed information not misleading; and

(16) In addition to any other requirements of this section, if a provider's continuing care agreement includes a provision to provide assisted living program services or nursing home services, and the provider does not execute a separate assisted living agreement, the disclosure statement shall contain, with regard to the assisted living program:

(A) The name and address and a description of each facility that the provider operates;

(B) A statement regarding the relationship of the provider to other providers or services if the relationship affects the care of the resident;

(C) A description of any special programming, staffing, and training provided by the program for individuals with particular needs or conditions, such as cognitive impairment or confinement to bed;

(D) The security practices and procedures which the provider shall implement to protect the resident and the resident's property;

(E) A statement of the obligations of the provider and the obligations and added charges, if any, to the resident or the resident's agent as to:

- (i) Arranging for or overseeing medical care;
- (ii) Monitoring the health status of the resident; and
- (iii) Purchasing or renting essential or desired equipment and supplies; and

(F) An explanation of the assisted living program's and the nursing home component's complaint or grievance procedure.

(b) The cover page of the disclosure statement shall state, in a prominent location and in boldface type, the date of the disclosure statement, the last date through which that disclosure statement may be delivered if not earlier revised, and that the delivery of the disclosure statement to a contracting party before the execution of a contract for the provision of continuing care is required by this chapter but that the disclosure statement has not been reviewed or approved by any government agency or representative to ensure accuracy or completeness of the information set forth.

(c) A copy of the standard form of contract for continuing care used by the provider shall be attached to each disclosure statement.

(d) Rules adopted under this chapter may prescribe a standardized format for the required disclosure statement. The Mayor shall, when promulgating rules for standardized forms under this chapter, attempt to seek clarity and require that disclosure statements be written in language reasonably designed to be understandable to potential residents.

(Apr. 5, 2005, D.C. Law 15-270, § 105, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.06. Contract for continuing care; specifications.

(a) Each contract for continuing care shall provide that:

(1) The resident may rescind the contract within 30 days following the execution of the contract or the receipt of a disclosure statement that meets the requirements of this chapter, whichever is later, and the resident to whom the contract pertains shall not be required to move into the facility before the expiration of the 30-day period;

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract shall be automatically canceled; and

(3) Except as provided in paragraph (4) of this subsection, for rescinded or canceled contracts under this chapter, the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less:

(A) Periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident;

(B) Those nonstandard costs specifically incurred by the provider or

facility at the request of the resident and described in the contract or any contract amendment signed by the resident;

(C) Nonrefundable fees, if set forth in the contract; and

(D) A reasonable service charge, if set forth in the contract, not to exceed the greater of \$1,000 or 2% of the entrance fee; and

(4) A provider shall not deduct from a refund due for a rescinded or canceled contract non-refundable fees set forth in the rescinded or canceled contract or any service charge if the contract performance by the resident becomes impossible due to death or morbidity, and the resident did not occupy a living unit in the facility.

(b) Each contract shall include provisions that specify the following:

(1) The total consideration to be paid;

(2) Services to be provided and whether there shall be additional charges for services not included in the monthly fees;

(3) The procedures the provider shall follow to change the resident's accommodation if necessary for the protection of the health or safety of the resident or the general and economic welfare of the residents and the procedures the resident can use to contest the provider's decision to change the resident's accommodations;

(4) The policies to be implemented if the resident cannot pay the periodic fees;

(5) The terms governing the refund of any portion of the entrance fee if there is a discharge by the provider or cancellation by the resident;

(6) The policy regarding increasing the periodic fees;

(7) The description of the living quarters;

(8) Any religious or charitable affiliations of the provider and the extent, if any, to which the affiliate organization shall be responsible for the financial and contractual obligations of the provider;

(9) Any property rights of the resident, including the right, if any, to an equity interest in the property;

(10) The policy, if any, regarding fee adjustments if the resident is voluntarily absent from the facility;

(11) A requirement, if any, that the resident have Medicare, Medicare supplement, or other medical or long-term care insurance apply for Medicaid, public assistance, or any public benefit program;

(12) The policy of ownership of pets;

(13) A requirement, if any, that the resident have Medicare, Medicare supplement, or other medical or long-term care insurance;

(14) The procedures the residents shall follow to file a grievance and the procedures the provider shall follow to resolve the grievance and that the resident shall not be subject to retaliatory action for filing a grievance; and

(15) The right of residents to bring a civil action to recover for injury resulting from violations of this chapter and its regulations.

(c) If a resident's continuing care agreement provides for assisted living services and, if the provider does not have an assisted living bed available at the facility when the resident needs the promised care, the provider shall provide the assisted living services the resident needs:

(1) At the same rate the resident would have to pay if an assisted living bed was available; and

(2) At the provider's option:

(A) In the resident's independent living unit; or

(B) In a nearby licensed assisted living facility.

(d) If a resident's continuing care agreement promises the provider shall provide the resident with comprehensive nursing care services if the resident needs them and, if the provider does not have a nursing care bed available when the resident needs the promised care, the provider shall provide the nursing care services needed as follows:

(1) At the same rates a resident would have paid if a nursing bed were available; and

(2) At the provider's option:

(A) In the resident's independent or assisted living unit; or

(B) In a nearby licensed comprehensive care facility.

(e) A provider shall pay any contractual entrance fee refund due under a continuing care agreement to which it is a party within 60 days of the agreement being terminated by a resident's election or death if, on the termination date, the unit has been occupied by or reserved for another resident who has paid an entrance fee.

(f) The resident's continuing care contract shall permit the resident to identify the resident's estate or the person or persons to whom payment shall be made if a refund is due by reason of the resident's death.

(Apr. 5, 2005, D.C. Law 15-270, § 106, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.07. Annual disclosure statement revision.

(a) Within 150 days following the end of each fiscal year, the provider shall file with the Commissioner a revised disclosure statement setting forth current information required. The provider shall also make the revised disclosure statement available to all the residents of the facility. The revised disclosure statement shall include a narrative describing any material differences between:

(1)(A) The forecast statements of revenues and expenses and cash flows or other forecast financial data filed pursuant to law as a part of the disclosure statement filed most immediately subsequent to the start of the provider's most recently completed fiscal year; and

(B) The actual results of operations during that fiscal year; and

(2) The revised forecast statements of revenues and expenses and cash flows or other forecast financial data being filed as a part of the revised disclosure statement filed at any other time if, in the opinion of the provider, revision is necessary to prevent an otherwise current disclosure statement from containing a material misstatement of fact or omitting a material fact required to be stated therein.

(b) Only the most recently recorded disclosure statement, with respect to a

facility, and in any event, only a disclosure statement dated within one year plus 150 days prior to the date of delivery, shall be considered current for purposes of the law or delivered pursuant to this chapter.

(Apr. 5, 2005, D.C. Law 15-270, § 107, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.08. Operating reserves.

(a) All continuing care facilities shall maintain, after opening, operating reserves equal to 20% of the total operating costs projected for the 12-month period following the period covered by the most recent annual disclosure statement filed. The forecast statements as required shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs shall include debt service, consisting of principal and interest payments and taxes and insurance on any mortgage loan or other long-term financing, but shall exclude depreciation, amortized expenses, and extraordinary items as may be approved by regulation. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. The operating reserves may be funded by cash, invested cash, commercial paper, or by investment grade securities, including bonds, stocks, United States Treasury obligations, or obligations of United States government agencies.

(b) A provider that has begun construction, has permanent financing in place, or is in operation on April 5, 2005, has up to 5 years to meet the operating reserve requirements.

(c) The Commissioner may require a provider not meeting its reserve requirements established by subsection (a) of this section to place the reserves in an escrow account with a bank, trust company, or other escrow agent approved by the Commissioner.

(d) The notes to the provider's annual audited financial statements shall state whether or not the reserve requirements have been met.

(e) The Commissioner may allow withdrawal or borrowing from the reserves in an amount not greater than 20% of the provider's total reserves. The withdrawal or borrowing may be approved by the Commissioner only if required for making an emergency repair or replacement of equipment, to cover catastrophic loss that is not able to be covered by insurance, or for debt service in a potential default situation. No withdrawal or borrowing may be made from a reserve without the approval of the Commissioner pursuant to subsection (f) of this section. All funds borrowed shall be repaid to the reserve within 18 months in accordance with a payment plan approved by the Commissioner.

(f) Operating reserves shall only be released upon the submission of a detailed request from the provider or facility and shall be approved by the Commissioner. The request shall be submitted in writing for review by the Commissioner at least 10 business days prior to the date of withdrawal.

(Apr. 5, 2005, D.C. Law 15-270, § 108, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.09. Escrow, collection of deposits.

(a) All continuing care facilities both prior to and after opening shall maintain escrow accounts for the total amount of any entrance fee, or any other fee or deposit that may be applied toward the entrance fee, in the following instances:

(1) The amounts received if an applicant for residence in a continuing care facility or their guardian provide a deposit with their application prior to the applicant taking up residence in the continuing care facility;

(2) If an applicant for residence in a continuing care facility or their guardian provide a deposit with their application prior to the construction or occupancy of the facility; and

(3) If a revocation order for the provider's license as a continuing care facility is under appeal.

(b)(1) If an escrow account is required by this chapter, a provider shall establish an escrow account with:

(A) A bank;

(B) A trust company; or

(C) Another independent person or entity agreed upon by the provider and the resident, unless such account arrangement is prohibited by law.

(2) The continuing care services contract shall provide that the total amount of any entrance fee, or any other fee or deposit that may be applied toward the entrance fee, received by the provider be placed in the escrow account. A facility may place a letter of credit, negotiable securities, or a security bond equal to the total amount of any entrance fee or any other fee or deposit in escrow in lieu of any other requirement of this section.

(3) If the funds are collected prior to the construction or occupancy of the facility, the funds shall be released only as follows:

(A) The first 25% of escrowed funds may be released when:

(i) The provider has pre-sold at least 50% of the independent living units, having received a minimum 10% deposit on the pre-sold units;

(ii) The provider has received a commitment for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and

(iii) Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, are equal to:

(I) Not less than 90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility; and

(II) Not less than 90% of the funds estimated in the statement of cash flows submitted by the provider as that part of the disclosure statement required by this chapter to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care contracts.

(B) The remaining 75% of escrowed funds may be released when:

(i)(I) The provider has pre-sold a minimum of 75% of the independent living units, having received a minimum 10% deposit on the pre-sold units, or has maintained an independent living unit occupancy of a minimum of 75% for at least 60 days;

(II) Construction or purchase of the independent living unit has been completed and an occupancy permit, if applicable, has been issued; and

(III) The living unit becomes available for occupancy by the new resident; or

(ii) The provider submits a plan of reorganization that is accepted and approved.

(c) If funds are escrowed under subsection (a)(1) or (3) of this section, upon receipt by the escrow agent of a request by the provider for the release of the funds, the escrow agent shall approve release of the funds within 5 working days unless the escrow agent finds that the requirements of subsection (b) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(d) Release of any escrowed funds that may be due to the subscriber or resident shall occur upon 5 working days' notice of death, nonacceptance by the facility, or voluntary cancellation. If voluntary cancellation occurs after construction has begun, the refund may be delayed until a new subscriber is obtained for that specific unit; provided, that the period for refund shall not exceed 2 years.

(e) If the provider fails to meet the requirements for release of funds held in the escrow account within a time period the escrow agent considers reasonable, the funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

(f) Facilities that currently meet the 75% pre-sales or the 75% occupancy requirements, as set forth in subsection (b)(3)(B) of this section, shall not be required to escrow entrance fees, unless otherwise required by the Commissioner.

(g) During any period exceeding 90 days during a calendar year, that the total value of any letter of credit, negotiable securities, or a security bond deposited in an escrow account by a provider pursuant to subsection (b) of this section is less than 5% of the total amount of any entrance fee or any other fee or deposit that may be applied toward the entrance fee received by the provider, the Commissioner may order the provider to:

(1) Increase the value of any letter of credit, negotiable securities, or a security bond deposited in an escrow account so that the total value of the deposits is equal to all entrance fees or any other fees or deposits that may be applied toward the entrance fee received by the provider;

(2) Provide substitute deposits in order that the total value in the escrow account is equal to all entrance fees or any other fees or deposits that may be applied toward the entrance fee received by the provider; or

(3) Deposit in the escrow account an amount of cash equal to all entrance

fees or any other fees or deposits that may be applied toward the entrance fee received by the provider.

(Apr. 5, 2005, D.C. Law 15-270, § 109, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.10. Right to organization.

(a) A resident living in a facility registered under this chapter has the right of self-organization, the right to be represented by an individual of the resident's own choosing, and the right to engage in concerted activities to keep informed on the operation of the facility in which he or she is a resident or for other mutual aid or protection. Responsible family members and legal guardians of residents in the assisted living and nursing components have the same rights of organization.

(b) The facility shall provide space and other appropriate accommodations, including heat, light, and furnishings, for residents' organizations.

(c) The board of directors or other governing body of a continuing care facility or its designated representative shall hold annual meetings with the residents of the continuing care facility for free discussions of subjects including income, expenditures, and financial trends and problems as they apply to the facility and discussions of proposed changes in policies, programs, and services. Residents and guardians, legal representatives, or designees of residents shall be entitled to at least 7 days advance notice of each meeting. Residents in the assisted living and nursing components shall receive these notices, which also shall be sent to the legal guardians or responsible family members. An agenda and any materials that shall be distributed by the governing body at the meetings shall remain available upon request to residents and to guardians, legal representatives, or designees of residents.

(d) A provider that has a governing body shall include at least one resident as a full and regular member of the governing body who shall be selected by vote of the residents of the facility.

(Apr. 5, 2005, D.C. Law 15-270, § 110, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.11. Rehabilitation or liquidation.

(a) Application may be made to the Superior Court of the District of Columbia or to the federal bankruptcy court that may have previously taken jurisdiction over the provider or facility for an order directing or authorizing the appointment of a trustee to rehabilitate or to liquidate a facility if, at any time, it is determined, after notice and an opportunity for the provider to be heard, that:

(1) A portion of an entrance fee escrow account required to be maintained

under this chapter has been or is proposed to be released in violation of this chapter;

(2) A provider has been or shall be unable, in such a manner as may endanger the ability of the provider, to fully perform its obligations pursuant to contracts for continuing care, to meet the financial forecasts previously filed by the provider;

(3) A provider has failed to maintain the escrow account required under this title; or

(4) A facility is bankrupt or insolvent, or in imminent danger of becoming bankrupt or insolvent.

(b) An order to rehabilitate a facility shall direct a trustee to take possession of the property of the provider and to conduct the business thereof, including the employment of such managers or agents as may be considered necessary and to take such steps as the court may direct toward removal of the causes and conditions which have made rehabilitation necessary.

(c) If, at any time, the court finds, upon petition of the trustee or provider, or on its own motion, that the objectives of an order to rehabilitate a facility have been accomplished and that the facility can be returned to the provider's management without further jeopardy to the residents of the facility, the court may, upon a full report and accounting of the conduct of the facility's affairs during the rehabilitation and of the facility's current financial condition, terminate the rehabilitation and, by order, return the facility and its assets and affairs to the provider's management.

(d) If, at any time, it is determined that further efforts to rehabilitate the provider would be useless, application may be made to the court for an order of liquidation.

(e) An order to liquidate a facility:

(1) May be issued upon application of the Mayor whether or not there has been issued a prior order to rehabilitate the facility;

(2) Shall act as a revocation of the license of the facility under this chapter; and

(3) Shall include an order directing a trustee to marshal and liquidate all of the provider's assets located within the District.

(f) Unless preempted by federal law, the first \$500 of compensation or wages owed to an officer or employee of a continuing care provider for services rendered within 3 months before the commencement of a delinquency proceeding against the continuing care provider shall be paid before payment of any other debt or claim.

(g) Effective at the time a facility is first occupied by any resident, there shall exist a lien on the real and personal property of the provider or facility to secure the obligations of the provider pursuant to existing and future contracts for continuing care. A lien under this section shall be effective for a period of 10 years. The lien may be foreclosed upon the liquidation of the facility or the insolvency or bankruptcy of the provider and in that event the proceeds shall be used in full or partial satisfaction of obligations of the provider.

(h) If a provider is bankrupt or insolvent or has filed for protection from creditors under any federal bankruptcy or insolvency law, any resident or

association of residents, or the legal representative of a resident or association of residents, may apply to the federal bankruptcy court for an order directing the appointment of a trustee to rehabilitate or liquidate a facility.

(i) In applying for an order to rehabilitate or liquidate a facility, in addition to the provisions of subsection (h) of this section, due consideration shall be given in the application to the manner in which the welfare of persons who have previously contracted with the provider for continuing care may be best served.

(j) An order for rehabilitation under this section shall be refused or vacated if the provider posts a bond, by recognized surety authorized to do business in the District and executed on behalf of persons who may be found to be entitled to a refund of entrance fees from the provider or other damages if the provider is unable to fulfill its contracts to provide continuing care at the facility, in an amount determined by the Court to be equal to the reserve funding that would otherwise need to be available to fulfill such obligations.

(Apr. 5, 2005, D.C. Law 15-270, § 111, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.12. Investigations and subpoenas.

For the purposes of any investigation or proceeding under this chapter, any person may be required or permitted by the Commissioner to file a statement in writing, under oath or otherwise, as to any of the facts and circumstances concerning the matter to be investigated.

(Apr. 5, 2005, D.C. Law 15-270, § 112, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.13. Examinations; financial statements.

(a) Each provider shall keep and make available to the Commissioner at the provider's place of business any books and records that the Commissioner, by rule or regulation, requires to enable the Commissioner to enforce this chapter and any rule or regulation adopted under this chapter.

(b) Each provider shall retain for at least 3 years after final payment is made by a resident copies of any contract or agreement, records of payments received by the provider from a resident or a person on behalf of a resident, and such other papers or records relating to the loan as may be required by rule or regulation.

(c) On approval of the Commissioner, a provider shall not be required to maintain at the provider's place of business any books and records otherwise required by the Commissioner under subsection (a) of this section if the licensee:

(1) Makes the books and records available to the Commissioner at the

licensee's place of business within 5 business days of the Commissioner's official request; and

(2) Retains the records for at least 60 months in a storage facility disclosed to the Commissioner.

(d) The Commissioner or his designee may, in the Commissioner's discretion, visit a provider or continuing care facility offering continuing care in the District to examine its books and records. The provider examined shall pay expenses incurred in conducting examinations under this section. These expenses may include the salary of the government employee based on the time spent conducting or supervising the examination, the fees of a third-party auditor, and reasonable and necessary out-of-pocket expenses incurred by the Department or third-party auditor.

(Apr. 5, 2005, D.C. Law 15-270, § 113, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.14. Civil liability.

(a) Any provider, facility, or person who enters into a contract for continuing care at a facility without having first delivered a disclosure statement meeting the requirements of this chapter to the person contracting for continuing care, or enters into a contract for continuing care at a facility with a person who has relied on a disclosure statement that omits to state, or misstates, a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, shall be liable to the person contracting for continuing care for actual damages and repayment of all fees paid to the provider, facility, or person violating this chapter, less the reasonable value of care and lodging provided to the resident by or on whose behalf the contract for continuing care was entered into prior to discovery of the violation, misstatement, or omission or the time the violation, misstatement, or omission should reasonably have been discovered, together with interest thereon at the legal rate for judgments, court costs, and reasonable attorneys' fees. The interest shall accrue on the date of entering into a contract or when the resident or their representative knew or should have known of the violation, omission, or misstatement, whichever is later.

(b) Liability under this section shall exist regardless of whether the provider or person liable had actual knowledge of the misstatement or omission.

(c) A person shall not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid the provider, facility, or person violating this chapter, together with interest at the legal rate for judgments, less the current contractual value of care and lodging provided prior to receipt of the offer, and if the offer recited the provisions of this section and the recipient of the offer failed to accept it within 30 days of actual receipt. The interest shall begin to accrue on the date of entering into a contract or when the resident or their representative knew or should have known of the violation, omission, or misstatement, whichever is

later. Nothing in this subsection shall prohibit the Mayor from bringing an action for a violation of this chapter.

(d) An action shall not be maintained to enforce a liability created under this chapter unless brought before the expiration of 3 years after the execution of the contract for continuing care that gave rise to the violation or the date when the resident or his or her representative knew or should have known of the violation, omission, or misstatement, whichever is earlier.

(e) The Mayor may impose civil penalties or take other action appropriate to correct violations of this chapter. The Mayor may bring an action to enforce this chapter.

(Apr. 5, 2005, D.C. Law 15-270, § 114, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.15. Criminal penalties.

(a) Any person who violates § 44-151.02(a), or makes, or causes to be made, in a document filed with the Commissioner or in any proceeding under this chapter, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect, shall be guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than \$1,000, be imprisoned for not more than one year, or both. All prosecutions under this subsection shall be upon information filed in the Superior Court of the District of Columbia in the name of the District by the Attorney General for the District of Columbia or any of his or her assistants.

(b) A person shall be guilty of fraud in the second degree, as defined in § 22-3221(b), if the person, in connection with the offer, sale, or purchase of continuing care services, knowingly or intentionally:

(1) Employs a device, scheme, or artifice to defraud;

(2) Obtains money or property by means of an untrue statement of a material fact or an omission to state a material fact in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) Engages in a transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon a person; or

(4) In a matter within the jurisdiction of the Commissioner, falsifies, conceals, or covers up, by a trick, scheme, or device, a material fact, makes any false, fictitious, or fraudulent statement or representation, or makes or use any false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry.

(c) A person shall be guilty of fraud in the first degree, as defined in § 22-3221(a), if the person, by use of a plan, program, or campaign that is conducted using one or more telephones or other electronic means of communication for the purpose of inducing the purchase or sale of continuing care services, knowingly or intentionally:

(1) Employs a device, scheme, or artifice to defraud;

(2) Obtains money or property by means of an untrue statement of a

material fact or an omission to state a material fact in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) Engages in a transaction, practice, or course of business which operates, or would operate, as a fraud or deceit upon a person; or

(4) In a matter within the jurisdiction of the Commissioner, falsifies, conceals, or covers up, by a trick, scheme, or device, a material fact, makes any false, fictitious, or fraudulent statement or representation, or makes or use any false writing or document, knowing the same to contain a false, fictitious, or fraudulent statement or entry.

(d) The evidence which is available concerning violation of this chapter or of any rule or order under this chapter may be referred to the Attorney General for the District of Columbia who may, with or without such reference, institute the appropriate criminal proceedings under this chapter.

(e) Nothing in this chapter shall limit the power of the District to punish a person for conduct constituting a crime under other law.

(Apr. 5, 2005, D.C. Law 15-270, § 115, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.16. Other licensing or regulation.

Nothing in this chapter affects the authority of any agency otherwise provided by law to license or regulate any health service facility, domiciliary service facility, or food service.

(Apr. 5, 2005, D.C. Law 15-270, § 116, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.17. Rulemaking authority; reasonable time to comply with rules.

(a) The Mayor may promulgate rules to carry out and enforce the provisions of this chapter.

(b) Any provider who is offering continuing care shall be given a reasonable time, not to exceed one year from the date of publication of any applicable rules promulgated pursuant to this chapter, within which to comply with the rules and to obtain a license.

(Apr. 5, 2005, D.C. Law 15-270, § 117, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

§ 44-151.18. Continuing Care Retirement Community Regulatory and Supervision Trust Account.

All fees, fines, penalties, and assessments received by the Commissioner under this chapter shall be deposited in, and credited to, the Continuing Care Retirement Community Regulatory and Supervision Trust Account established by § 31-1202(b-2) and expended in accordance with § 31-1202(b-2).

(Apr. 5, 2005, D.C. Law 15-270, § 118, 52 DCR 799.)

Legislative history of Law 15-270. — For Law 15-270, see notes following § 44-151.01.

CHAPTER 2. CLINICAL LABORATORIES.

Sec.

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§ 44-201. Definitions.

For the purposes of this chapter, the term:

(1) Repealed.

(2) "Board" means the Laboratory Advisory Board established by § 44-206.

(3) "Clinical laboratory" means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. Such examination also includes one or more procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the human body. The term "clinical laboratory" shall include all independent, hospital, physician-operated, health-care, and District of Columbia government laboratories.

(4) Repealed.

(5) "Cytotechnologist" means a person who meets qualifications for a cytotechnologist under 42 CFR § 493.1483.

(6) Repealed.

(6A) "Highly complex test" means a laboratory test that requires sophisticated techniques, interpretations of multiple signals, or proven technical skill. Highly complex tests may require:

(A) Highly skilled physical manipulation;

(B) Technique dependent steps in the testing, sampling, or reading of results;

(C) User Programming of a device;

(D) Detailed calculation of the results;

(E) Dilution of samples with chemically reactive substances; or

(F) Preparation of reagents.

(7) "Laboratory director" means the person responsible for administration of the technical and scientific operation of a clinical laboratory, including supervision of procedures and reporting findings of tests.

(8) "Laboratory reference system" means a system of periodic testing of methods, procedures, and materials of laboratories, including the distribution of manuals of approved methods, inspection of facilities, and cooperative research.

(8A) "Moderately complex test" means a laboratory test that requires a

series of steps, reagents, additions, or instrumentation, the result of which is determined by a visual signal.

(9) Repealed.

(10) "Proficiency testing program" means an external program approved by the Mayor to monitor proficiency in the performance of medical laboratory tests.

(11) Repealed.

(12) "Specimen" means materials derived from the human body.

(13) "Testing event" means a specific evaluation or set of evaluations offered or performed by a laboratory to test accuracy as part of required proficiency testing.

(14) "Testing personnel" means an individual employed or otherwise engaged by a clinical laboratory to perform clinical laboratory tests or examinations.

(15) "Waived test" means a test that is non-instrumental in nature, the result of which is determined by a visual signal.

(Mar. 16, 1989, D.C. Law 7-182, § 2, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(a), 52 DCR 7503.)

Section references. — This section is referred to in § 47-2853.04.

Prior Codifications. — 1981 Ed., § 32-1501.

Effect of amendments. — D.C. Law 16-33, repealed pars. (1), (4), (6), (9) and (11); added pars. (6A), (8A), (13), (14) and (15); and rewrote pars. (3), (5) and (7).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(a) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — Law 7-182, the "Clinical Laboratory Act of 1988", was introduced in Council and assigned Bill No. 7-373, which was referred to the Committee

on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on July 12, 1988, and September 27, 1988, respectively. Signed by the Mayor on October 13, 1988, it was assigned Act No. 7-240 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

Short title. — Short title of subtitle B of title V of Law 16-33: Section 5011 of D.C. Law 16-33 provided that subtitle B of title V of the act may be cited as the Clinical Laboratory Amendment Act of 2005.

References in text. — The reference to "42 C.F.R. § 405.1315(c) (1987)", appearing in (5), does not appear in the 1990 edition of CFR.

§ 44-202. License requirements for clinical laboratories.

(a) Except as provided in subsection (b) of this section, it shall be unlawful to operate a clinical laboratory in the District of Columbia, whether public or private, for profit or not-for-profit, unless licensed by the Mayor.

(a-1) Except as provided in subsection (c) of this section, it shall be unlawful to engage in any of the following activities unless licensed to engage in that activity by the Mayor, whether the activity is public or private, for profit or not for profit:

(1) Performing or offering to perform clinical laboratory tests or examinations in the District of Columbia; or

(2) Performing or offering to perform clinical laboratory tests or examinations on specimens acquired in the District of Columbia, regardless of the location of the clinical laboratory at which the tests or examinations are performed.

(b) Clinical laboratory licenses shall not be required of:

- (1) Clinical laboratories operated by the federal government;
- (2) Any laboratory maintained and operated purely for nonclinical research purposes, the results of which are not used for clinical application;
- (3) Any laboratory operated solely for teaching and conducting analyses, the results of which are not used for clinical application; or
- (4) Repealed.

(c) Clinical laboratories that, prior to March 16, 1989, were not or would not have been subject to licensure in the District of Columbia may operate without a license until one year after the issuance of rules pursuant to § 44-213.

(d) An application for a clinical laboratory license shall be made by the owner of the clinical laboratory on forms provided by the Mayor. The application shall contain the name of the owner, the name of the laboratory director, the categories of laboratory tests for which the clinical laboratory license is sought, an approved proficiency testing program in which the clinical laboratory plans to participate, the location and physical description of the facility at which tests are to be performed, and other information as the Mayor may require.

(e) A license shall be valid only for the premises stated on the application.

(f) A license shall automatically become void 30 days following a change in the laboratory director, or 30 days following a change in ownership or location of the clinical laboratory. A new application for a license may be made prior to a change in the laboratory director, ownership, or location of the clinical laboratory, or prior to the expiration of the 30-day period, in order to permit the uninterrupted operation of the clinical laboratory.

(g) Unless already terminated or renewed, a clinical laboratory license shall expire 2 years from the date of initial issuance or the date of last renewal. An application for a license shall be accompanied by a license fee determined by the Mayor that is commensurate to the cost of inspection.

(h) A clinical laboratory license shall specify on its face the names of the owner and the director of the laboratory, the categories of laboratory tests authorized, and the location at which the tests may be performed. Each clinical laboratory licensed under this chapter shall post its license in a conspicuous place on the premises, and have its license readily available for inspection by the public.

(i) A license shall not be issued or renewed unless:

- (1) A valid certificate of qualification in the procedures for which the license is sought has been issued to the laboratory director by a recognized personnel certifying agency as approved by the Mayor;
- (2) The clinical laboratory is appropriately staffed with qualified personnel and properly equipped;
- (3) The clinical laboratory has participated to the satisfaction of the Mayor in an approved proficiency testing program, pursuant to § 44-209; and
- (4) The clinical laboratory is operated in the manner required by this chapter and rules issued pursuant to this chapter.

(j) Any license issued pursuant to this section shall be issued as a Public Health: Laboratory endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Mar. 16, 1989, D.C. Law 7-182, § 3, 35 DCR 7718; Apr. 20, 1999, D.C. Law 12-261, § 2003(bb)(1), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(dd)(1), 50 DCR 6913; Oct. 20, 2005, D.C. Law 16-33, § 5012(b), 52 DCR 7503.)

Section references. — This section is referred to in § 44-205.

Prior Codifications. — 1981 Ed., § 32-1502.

Effect of amendments. — D.C. Law 15-38, in subsec. (j), substituted “Public Health: Laboratory endorsement to a basic business license under the basic” for “Class A Public Health: Laboratory endorsement to a master business license under the master”.

D.C. Law 16-33 deleted the last sentence in subsec. (a); added subsec. (a-1); repealed subsec. (b)(4); in subsec. (c), substituted “one year” for “6 months”; in subsec. (g), substituted “2 years” for “one year”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(dd)(1) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see § 5012(b) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Re-

form Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of 2003,” was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-182, see Mayor’s Order 89-211, September 15, 1989.

§ 44-203. Laboratory director.

(a) A clinical laboratory shall be under the direct and personal supervision of a laboratory director.

(b) To qualify as a laboratory director, a person shall meet the applicable qualifications as specified in rules issued pursuant to § 44-213 and shall:

(1) Hold a doctor of science degree or its equivalent in one of the basic sciences of chemistry, biology, or microbiology, including professional degrees in public health, medicine, osteopathy, pharmacy, dentistry, or veterinary medicine from a college or university recognized by the National Committee of Regional Accrediting Agencies; and

(2)(A) Have a minimum of 4 years of experience in a clinical laboratory acceptable to the Mayor; or

(B) Be certified by the American Board of Pathologists, the American Board of Osteopathic Pathology, the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or other accrediting board acceptable to the Mayor in one of the laboratory specialties.

(c) The laboratory director shall be responsible for the proper performance of all tests in a clinical laboratory. The laboratory director shall direct and supervise the testing of specimens and be responsible for the continuous application of quality control procedures to the clinical laboratory work in

accordance with the rules issued pursuant to this chapter. The laboratory director shall be responsible for the work of subordinates. Clinical laboratory records of all work performed shall indicate the name of the laboratory director and be signed by or otherwise indicate the person who actually performed the test.

(d) The laboratory director shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation, as needed. If the laboratory director cannot be accessible on a short-term basis for a period of time to be determined by the Mayor, the laboratory director shall designate, in writing, a substitute laboratory director who is qualified to be director in accordance with rules issued pursuant to § 44-213.

(e) No person may serve as a director of more than 5 clinical laboratories.

(Mar. 16, 1989, D.C. Law 7-182, § 4, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(c), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(s)(1), 53 DCR 6794.)

Section references. — This section is referred to in § 44-205.

Prior Codifications. — 1981 Ed., § 32-1503.

Effect of amendments. — D.C. Law 16-33, in subsec. (b), substituted “a person shall meet the applicable qualifications as specified in rules issued pursuant to § 44-213 and shall.” for “a person shall meet.”; in subsec. (e), substituted “5” for “2”; and rewrote subsec. (d), which had read as follows: “(d) The laboratory director shall be present for a reasonable period of each working day in each clinical laboratory for which he or she is director. If the laboratory director cannot be present on a short-term basis for a period of time to be determined by the Mayor, the laboratory director shall designate,

in writing, a substitute laboratory director who meets the qualifications of subsection (b) of this section.”

D.C. Law 16-191, in subsec. (b), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(c) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

§ 44-204. Qualifications of technical personnel.

(a) A clinical laboratory performing only waived tests shall employ testing personnel who meet the qualifications set out in rules issued pursuant to § 44-213.

(b)(1) A clinical laboratory performing moderately complex tests shall employ a laboratory director, a technical consultant, a clinical consultant, and testing personnel. A person may function in more than one of these capacities if he or she meets the qualifications specified in this chapter and in rules issued pursuant to § 44-213.

(2) The laboratory director, technical consultant, clinical consultant, and testing personnel shall meet the qualifications as specified in rules issued pursuant to § 44-213.

(c)(1) A clinical laboratory performing highly complex tests shall employ a laboratory director, a general supervisor, a technical supervisor, a clinical consultant, and testing personnel. A person may function in more than one of these capacities if he or she meets the qualifications specified in this chapter and in rules issued pursuant to § 44-213.

(2) The laboratory director, general supervisor, technical supervisor, clinical consultant, and testing personnel shall meet qualifications as specified in rules issued pursuant to § 44-213.

(3) In addition to the requirements set forth in paragraph (1) of this subsection, a clinical laboratory that performs highly complex tests in the subspecialty of cytology shall employ a cytology general supervisor, a cytology technical supervisor, and a cytotechnologist. A person may function in more than one of these capacities if he or she meets the qualifications specified in this chapter and in rules issued pursuant to § 44-213.

(Mar. 16, 1989, D.C. Law 7-182, § 5, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(d), 52 DCR 7503.)

Section references. — This section is referred to in § 44-205.

Prior Codifications. — 1981 Ed., § 32-1504.

Effect of amendments. — D.C. Law 16-33 rewrote the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(d) of

Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

§ 44-205. License requirements for physician office laboratories [Repealed].

Repealed.

(Mar. 16, 1989, D.C. Law 7-182, § 6, 35 DCR 7718; Apr. 20, 1999, D.C. Law 12-261, § 2003(bb)(2), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(dd)(2), 50 DCR 6913; Oct 20, 2005, D.C. Law 16-33, 5012(e), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 32-1505.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(dd)(2) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) repeal of section, see § 5012(e) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For

legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 44-202.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 44-202.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-182, see Mayor's Order 89-211, September 15, 1989.

§ 44-206. Mayor's authority to establish Laboratory Advisory Board.

(a) The Mayor shall appoint a Laboratory Advisory Board, which will advise the Mayor on:

(1) Classifying laboratory tests as waived, moderately complex, or highly complex for the purposes of this chapter;

(2) Developing additional requirements or limitations for clinical laboratories;

(3) Proficiency testing programs and certifying institutions and organizations for the purposes of this chapter; and

(4) Developing rules and procedures for inspections of laboratories.

(b) The Mayor shall appoint the members of the Board within 60 days of March 16, 1989.

(c) The Board shall transmit its written recommendations to the Mayor within 180 days of the date of the appointment of all members and shall then cease to exist.

(d) The Mayor may appoint a temporary board, at the Mayor's discretion, for whatever periods of the time the Mayor deems necessary because of advancements in technology or other purposes consistent with carrying out the provisions of this chapter.

(Mar. 16, 1989, D.C. Law 7-182, § 7, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(f), 52 DCR 7503.)

Section references. — This section is referred to in § 44-201.

Prior Codifications. — 1981 Ed., § 32-1506.

Effect of amendments. — D.C. Law 16-33 rewrote subsecs. (a)(1) and (a)(2).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(f) of

Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

§ 44-207. Inspections.

(a) The Mayor shall conduct inspections of clinical laboratories licensed to perform moderately complex and highly complex tests, including inspections of their methods, procedures, materials, staff, and equipment and may conduct inspections of clinical laboratories licensed to perform only waived tests.

(b) To ensure that each clinical laboratory is in compliance with the provisions of this chapter, and the rules issued pursuant to this chapter, the Mayor shall conduct an on-site inspection prior to the laboratory's initial licensure and before each license renewal. Temporary licenses or renewals may be granted for a period not to exceed 60 days to afford the Mayor sufficient time to conduct the on-site inspection. The Mayor may issue a provisional license for less than one year to a new clinical laboratory, pending satisfactory completion of additional follow-up inspections.

(Mar. 16, 1989, D.C. Law 7-182, § 8, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(g), 52 DCR 7503.)

Section references. — This section is referred to in § 44-205.

Prior Codifications. — 1981 Ed., § 32-1507.

Effect of amendments. — D.C. Law 16-33, in subsec. (b), deleted "and each Level III physician office laboratory" following "clinical laboratory" in the first sentence; and rewrote subsec. (a), which had read as follows: "(a) The Mayor shall conduct inspections of clinical lab-

oratories and Level II and Level III physician office laboratories, methods, procedures, materials, staff, and equipment with an option to inspect Level I physician office labs as deemed appropriate. Nothing shall prohibit an authorized District government official from entering the premises of any laboratory regulated by this chapter during operating hours for the purpose of conducting an announced or unannounced inspection consistent with constitu-

tional guidelines to check for compliance with any provision of this chapter or rules issued pursuant to this chapter. In conducting an inspection, the District government official shall make every effort not to disrupt the normal operations of the laboratory and its staff."

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(g) of

Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

§ 44-208. Quality assurance.

(a) The Mayor shall operate a laboratory reference system and shall prescribe standards for the examination of specimens.

(b) The Mayor shall adopt rules pursuant to § 44-213 that:

(1) Prohibit payment to laboratory personnel based upon the number of tests performed; and

(2) Limit the number of hours that laboratory personnel may work.

(c) The Mayor shall set standards for proficiency testing programs to determine a satisfactory result, a satisfactory level of overall performance, and a substandard level of overall performance.

(Mar. 16, 1989, D.C. Law 7-182, § 9, 35 DCR 7718.)

Prior Codifications. — 1981 Ed., § 32-1508.

legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 7-182. — For

§ 44-209. Proficiency testing programs.

(a) Each clinical laboratory shall participate in a proficiency testing program approved by the Mayor.

(b) A proficiency testing program shall include at least 3 proficiency testing events per year, performed at approximately equal intervals. Each testing event shall include at least 5 samples. Proficiency testing shall be conducted for each category of tests for which the clinical laboratory has obtained a license. If there is no sample available for evaluation during a testing event for a particular category of laboratory tests, the clinical laboratory must devise a system for self-evaluation of this category of tests. The system for self-evaluation shall be approved by the Mayor and performed at least twice per year.

(c) The clinical laboratory shall demonstrate continuing satisfactory performance in the proficiency testing program. Continuing satisfactory performance shall include:

(1) A determination of a satisfactory level of overall performance on each quarterly proficiency test; or

(2) A determination of a substandard level of overall performance on 1 quarterly proficiency test, followed by completion of an approved course of education in proper laboratory techniques and procedures, and a satisfactory level of overall performance on the next quarterly proficiency test.

(d) Proficiency testing programs shall report the results of each proficiency test to the Mayor. Upon receipt of a determination of a substandard level of

overall performance, the Mayor shall, within 30 days, inspect the clinical laboratory at any time during normal operating ours. For the purpose of this section, a substandard level of overall performance shall include intentional nonperformance.

(e) Upon completion of the inspection, the Mayor shall determine if any deficiencies exist. Upon an affirmative determination of any deficiency, the Mayor shall notify the laboratory director or the designated supervisory physician in writing of the deficiencies. The clinical laboratory shall submit a written plan to correct the deficiencies and an appropriate course of remedial education and dates by which the corrections shall be made to the Mayor within 30 days of the receipt of the notice of the deficiencies.

(f) If the clinical laboratory does not submit a plan for corrective action that is approved by the Mayor, or if a clinical laboratory is determined by the Mayor after a subsequent inspection not to have corrected the deficiencies as specified in the plan by the expiration dates in the plan, the Mayor may take action to revoke, suspend, or limit the laboratory license pursuant to § 44-212.

(g) The analyses and reports of a proficiency testing program may be considered by the Mayor in proceedings under § 44-213.

(Mar. 16, 1989, D.C. Law 7-182, § 10, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(h), 52 DCR 7503.)

Section references. — This section is referred to in §§ 44-202, 44-205, and 44-212.

Prior Codifications. — 1981 Ed., § 32-1509.

Effect of amendments. — D.C. Law 16-33 deleted “or physician office” following “clinical” throughout the section; and rewrote subsec. (b), which had read as follows: “(b) A proficiency testing program shall include proficiency testing at least 4 times per year. Proficiency tests shall be conducted for each category of tests for which the clinical or physician office laboratory has obtained a license.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(h) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

§ 44-210. Cytology screening.

The Mayor shall adopt rules pursuant to § 44-213 that:

(1) Limit the number of slides a cytotechnologist may examine to no more than 100 in a 24-hour period, irrespective of the site or clinical laboratory;

(2) Prohibit cytotechnologists from examining slides at any building not owned or used by a licensed clinical laboratory;

(3) Require clinical laboratories to rescreen no less than 10% of all negative pap smears, and require that pap smear rescreening be performed by a supervisory level cytotechnologist;

(4) Require clinical laboratories rescreen all negative noncervical smears, and require that noncervical smear rescreening be performed by a supervisory level pathologist;

(5) Require clinical laboratories to reject improperly prepared smear specimens, make appropriate comments regarding the quality of the specimen,

and maintain records on improperly prepared specimens for 5 years subject to review by the Mayor;

(6) Require clinical laboratories to maintain and store for 5 years from the date of examination any smear slide that was examined for disease or disease agents; and

(7) Require all smear specimen reports to be retained for at least 10 years.

(Mar. 16, 1989, D.C. Law 7-182, § 11, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(i), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 32-1510.

Effect of amendments. — D.C. Law 16-33, rewrote par. (1), which had read as follows: “(1) Limit the number of slides a cytotechnologist may examine per day;”

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(i) of

Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

§ 44-211. Confidentiality of test results.

(a) A patient may request, in writing, access to or copies of the results of the patient’s own laboratory tests.

(b)(1) All requests for clinical laboratory services, the results of all clinical laboratory tests, and the contents of patient specimens shall be confidential.

(2) Persons other than the patient or the patient’s physician may have access to the results of the patient’s laboratory tests if:

(A) The patient has given written consent to the person seeking access for the release of the records for a specific use; or

(B) The court has issued a subpoena for the results of the patient’s laboratory tests, and except in a law enforcement investigation, the person seeking access has given the patient notice and an opportunity to contest the subpoena.

(c) All clinical laboratory results shall be reported to the requesting physician. When there is no requesting physician, the clinical laboratory shall report the test results to the patient and shall recommend that the patient forward the laboratory results to the patient’s personal physician as soon as possible.

(Mar. 16, 1989, D.C. Law 7-182, § 12, 35 DCR 7718; Oct. 20, 2005, D.C. Law 16-33, § 5012(j), 52 DCR 7503.)

Prior Codifications. — 1981 Ed., § 32-1511.

Effect of amendments. — D.C. Law 16-33, in subsec. (b)(1), deleted “or physician office” following “clinical” in two places.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(j) of Fiscal Year 2006 Budget Support Emergency

Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

§ 44-212. Penalties and enforcement.

(a) A clinical laboratory license may be revoked, suspended, or limited by the Mayor on proof that the laboratory or one or more of its employees:

(1) Has made misrepresentations in obtaining the license or in the operation of the laboratory;

(2) Has engaged or attempted to engage or represented the laboratory as entitled to perform any laboratory procedure not authorized by the license;

(3) Has rendered a laboratory report actually performed in another laboratory without designating the fact that the examination or procedure was performed in another laboratory;

(4) Has failed to submit a plan for corrective action or failed to correct deficiencies as required in § 44-209; or

(5) Has failed to file a report required by the provisions of this chapter or the rules issued pursuant to this chapter.

(b)(1) If the Mayor determines, after investigation, that the conduct of a licensee presents an imminent danger to the health and safety of the residents of the District, the Mayor may summarily suspend or restrict, without a hearing, the license of the laboratory employee.

(2) The Mayor, at the time of the summary suspension or restriction of a license, shall provide the licensee with written notice stating the action that is being taken, the basis for the action, and the right of the licensee to request a hearing.

(3) A licensee shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of license. The Mayor shall hold a hearing within 72 hours of receipt of a timely request, and shall issue a decision within 72 hours after the hearing.

(4) Every decision and order adverse to a licensee shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings shall be supported by, and in accordance with, reliable, probative, and substantial evidence. The Mayor shall provide a copy of the decision and order and accompanying findings of fact and conclusions of law to each party to a case or to each party's attorney of record.

(c)(1) When the Mayor, after investigation, but prior to a hearing, has cause to believe that any clinical laboratory or laboratory employee is violating any provision of this chapter and the violation has caused or may cause immediate and irreparable harm to the public, the Mayor may issue an order requiring the alleged violator to cease and desist immediately from the violation. The order shall be served by certified mail or by personal service.

(2) The alleged violator may, within 15 days of the service of the order, submit a written request to the Mayor to hold a hearing on the alleged violation.

(3) Upon receipt of timely request, the Mayor shall conduct a hearing and render a decision.

(4)(A) The alleged violator may, within 10 days of the service of an order, submit a written request to the Mayor for an expedited hearing on the alleged violation, in which case the alleged violator shall waive his or her right to the 15-day notice.

(B) Upon receipt of a timely request for an expedited hearing, the Mayor shall conduct a hearing, pursuant to subchapter I of Chapter 5 of Title 2, within 10 days of the date of receiving the request and shall deliver to the alleged violator at his or her last known address a written notice of the hearing, at least 5 days before the hearing date.

(5) The Mayor shall issue a decision within 30 days after an expedited hearing. If a request for a hearing is not made, the order of the Mayor to cease and desist is final. If, after a hearing, the Mayor determines the alleged violator is not in violation of this chapter, the Mayor shall revoke the order to cease and desist. If any person fails to comply with a lawful order the Mayor issued pursuant to this section, the Mayor may petition the court to issue an order compelling compliance or take other action authorized by this chapter.

(d) Except as provided in this subsection, no license shall be revoked, suspended, or limited without a hearing pursuant to subchapter I of Chapter 5 of Title 2. If a license is revoked or limited for failure to demonstrate continuing satisfactory performance, reinstatement of the license shall require demonstration of proficiency over a testing period, not to exceed 6 months.

(e) Any laboratory director, laboratory owner, or designated supervisory physician who willfully and knowingly participates in the unlawful operation of a clinical laboratory in the District of Columbia, and any person who intentionally impedes a District of Columbia official or employee in the performance of his or her authorized duties under this chapter or any rules issued pursuant to this chapter, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not exceeding \$1,000 per day until the violation ceases, imprisonment for not more than 90 days, or both. Prosecution shall be in the Superior Court of the District of Columbia upon information by the Attorney General for the District of Columbia or one of his or her assistants.

(f) A violation of this chapter shall be a civil infraction for purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or the rules issued under authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infractions shall be pursuant to Chapter 18 of Title 2.

(g) Notwithstanding the availability of any other remedy, the Attorney General for the District of Columbia or one of his or her assistants may maintain, in the name of the District of Columbia, an action in the Superior Court of the District of Columbia to enjoin any person, agency, corporation, or other entity from operating a clinical laboratory in violation of the terms of its license, the provisions of this chapter, or any rules issued pursuant to this chapter.

(Mar. 16, 1989, D.C. Law 7-182, § 13, 35 DCR 7718; Apr. 13, 2005, D.C. Law 15-354, § 63, 52 DCR 2638; Oct. 20, 2005, D.C. Law 16-33, § 5012(k), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 5(s)(2), 53 DCR 6794.)

Section references. — This section is referred to in § 44-209.

Prior Codifications. — 1981 Ed., § 32-1512.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

D.C. Law 16-33 deleted “or physician office” following “clinical” throughout the section; in subsec. (c)(1), substituted “any clinical laboratory” for “any laboratory”.

D.C. Law 16-191, in subsec. (c)(1), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5012(k) of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 7-182. — For legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Legislative history of Law 15-354. — Law

15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

References in text. — The “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985”, referred to in subsection (f), is D.C. Law 6-42.

§ 44-213. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules, including a schedule of civil fines, to implement the provisions of this chapter.

(b) The Mayor may issue emergency rules, which shall be effective no more than 90 days and which shall be consistent with subchapter I of Chapter 5 of Title 2.

(Mar. 16, 1989, D.C. Law 7-182, § 14, 35 DCR 7718.)

Section references. — This section is referred to in §§ 44-202, 44-205, and 44-208 to 44-210.

Prior Codifications. — 1981 Ed., § 32-1513.

Legislative history of Law 7-182. — For

legislative history of D.C. Law 7-182, see Historical and Statutory Notes following § 44-201.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-182, see Mayor’s Order 89-211, September 15, 1989.

CHAPTER 2A. DEFIBRILLATOR USAGE.

Sec.

44-231. Definitions.

44-232. Access by the public to defibrillation.

44-232.01. AED program for Department of
Parks and Recreation facilities.44-232.02. Study to expand AED program
throughout public facilities.

Sec.

44-233. AED use and tort immunity.

44-234. Agency fund.

44-235. Rules.

44-236. [Repealed].

§ 44-231. Definitions.

For the purposes of this chapter, the term:

(1) “Automated external defibrillator” or “AED” or “defibrillator” means a medical device heart monitor and defibrillator that:

(A) Has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to section 510(k) of the Federal Food, Drug, and Cosmetic Act, approved October 10, 1962 (76 Stat. 794; 21 U.S.C. § 360(k));

(B) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and determining, without intervention by an operator, whether defibrillation should be performed; and

(C) Upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual’s heart.

(2) “Compensation” shall not include the salary of any person who registers an automated external defibrillator, trains the individuals who operate the registered automated external defibrillators, orders the automated external defibrillators which will subsequently be registered, or operates a registered automated external defibrillator at the scene of an emergency, excluding any professional medical emergency setting.

(3) “Recreation facility” means a Department of Parks and Recreation public facility that is regularly staffed by a paid District government employee.

(4) “Recreation facility certificate” means a certificate issued by the Mayor to authorize the installation and use of an AED at a recreation facility that has complied with the AED program requirements and guidelines established under § 44-232.01.

(Apr. 27, 2001, D.C. Law 13-278, § 2, 48 DCR 1869; Mar. 6, 2007, D.C. Law 16-217, § 2(a), 53 DCR 10207; Mar. 25, 2009, D.C. Law 17-362, § 2(a), 56 DCR 1211.)

Effect of amendments. — D.C. Law 16-217 rewrote this section, which formerly read:

“For the purposes of this chapter, the term ‘automated external defibrillator’ or ‘AED’ or ‘defibrillator’ means a medical device heart monitor and defibrillator that:

“(1) Has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to section

510(k) of the Federal Food, Drug, and Cosmetic Act, approved October 10, 1962 (76 Stat. 794; 21 U.S.C. 360(k));

“(2) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and determining, without intervention by an operator, whether defibrillation should be performed; and

“(3) Upon determining that defibrillation

should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart."

D.C. Law 17-362 added pars. (3) and (4).

Legislative history of Law 13-278. — Law 13-278, the "Public Access to Automated External Defibrillator Act of 2000," was introduced in Council and assigned Bill No. 13-735, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-573 and transmitted to both Houses of Congress for its review. D.C. Law 13-278 became effective on April 27, 2001.

Legislative history of Law 16-217. — Law 16-217, the "Good Samaritan Use of Automated External Defibrillators Clarification Amendment Act of 2006," was introduced in Council and assigned Bill No. 16-43, which was referred

to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 19 2006, it was assigned Act No. 16-546 and transmitted to both Houses of Congress for its review. D.C. Law 16-217 became effective on March 6, 2007.

Legislative history of Law 17-362. — Law 17-362, the "AED Installation for Safe Recreation and Exercise Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-635 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Approved without the signature of the Mayor on January 23, 2009, it was assigned Act No. 17-698 and transmitted to both Houses of Congress for its review. D.C. Law 17-362 became effective on March 25, 2009.

§ 44-232. Access by the public to defibrillation.

(a) A person who or entity that acquires an AED shall ensure that:

(1) Expected AED users receive training from and be certified by the American Heart Association, the American Red Cross, or an equivalent state or nationally recognized course, in cardiopulmonary resuscitation ("CPR") and in the use of an AED, and that the users maintain their certification in CPR and AED use;

(2) The defibrillator is maintained and tested according to the manufacturer's operational guidelines, and written records of the maintenance and testing are maintained;

(3) A physician licensed in the District of Columbia shall oversee all aspects of the defibrillation program, including training, coordination with the Fire and Emergency Medical Services Department ("Department"), protocol approval, AED deployment strategies, and equipment maintenance plan, and shall review each case in which the AED is used by the program; and

(4) Any person who uses an AED to provide emergency care or treatment on a person in cardiac arrest shall activate the Department's emergency medical service system as soon as possible, and shall report any clinical use of the AED to the licensed physician or medical authority. Data on AED use shall be submitted to the Department and reviewed by the Department.

(b)(1) Except as provided in paragraph (2) of this subsection, upon meeting the requirements of subsection (a) of this section, the defibrillation program shall be registered with the Department and the Department shall issue to the defibrillation program a certificate of registration. There shall be a registration fee of \$25. The certificate of registration shall expire after 4 years. To renew a certificate of registration, the person or entity shall be required to repeat the application process. If protocol is not followed, the Department may issue a citation, suspend certification, or revoke the certificate of registration.

(2) The Mayor shall issue, and reissue every 6 months, a recreation

facility certificate to a recreation facility that meets the requirements of subsection (a) of this section and § 44-232.01.

(c) Any person or entity who acquires an AED shall notify an agent of the Fire Chief, the EMS Medical Director, and the emergency communications or vehicle dispatch center of the existence of the AED and the Department of the existence, location, and type of AED. If an AED is removed, the Department shall be notified.

(Apr. 27, 2001, D.C. Law 13-278, § 3, 48 DCR 1869; Mar. 25, 2009, D.C. Law 17-362, § 2(b), 56 DCR 1211.)

Effect of amendments. — D.C. Law 17-362, in subsec. (b), designated the existing text as par. (1), inserted “Except as provided in paragraph (2) of this subsection,” and added par. (2).

Legislative history of Law 13-278. — For D.C. Law 13-278, see notes following § 44-231.

Legislative history of Law 17-362. — For Law 17-362, see notes following § 44-231.

§ 44-232.01. AED program for Department of Parks and Recreation facilities.

(a) The Mayor shall develop and implement an AED program for each recreation facility. The program shall meet the requirements of § 44-232, and, in addition, ensure that:

- (1) At least one AED is provided on-site at each recreation facility;
- (2) An individual trained in the operation and use of an AED, pursuant to a training program approved under subsection (c) of this section, is present during the recreation facility's hours of operation; and
- (3) Each AED is maintained, operated, and tested according to the manufacturers' guidelines by conducting periodic inspections and annual maintenance of each AED.

(b) The Mayor shall develop guidelines for the program, including requirements that written records be maintained documenting:

- (1) The maintenance and testing of each AED; and
- (2) That each Department of Parks and Recreation employee assigned to the recreation facility has successfully completed a training program approved under subsection (c) of this section.

(c)(1) The Mayor shall approve training programs required under this section in accordance with the requirements of § 44-232. The training programs may be conducted by a private or public entity.

(2) The training programs shall be in conjunction with health training provided to Department of Parks and Recreation employees, as well as refresher training, as required.

(d) The Mayor shall comply with this section within 45 days of March 25, 2009. The Mayor shall expand the AED program to a new recreation facility within 45 days of its opening.

(Apr. 27, 2001, D.C. Law 13-278, § 3a, as added Mar. 25, 2009, D.C. Law 17-362, § 2(c), 56 DCR 1211.)

Temporary Addition of Section. — Sections 2 to 4 of D.C. Law 17-213 added sections to read as follows:

“Sec. 2. Definitions.

“For the purposes of this act, the term:

“(1) ‘Automated external defibrillator’ or ‘AED’ or ‘defibrillator’ means a medical device heart monitor and defibrillator that:

“(A) Has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to section 501(k) of the Federal Food, Drug, and Cosmetic Act, approved October 10, 1962 (76 Stat. 794; 21 U.S.C. § 360(k));

“(B) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, and determining, without intervention by an operator, whether defibrillation should be performed; and

“(C) Upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual’s heart.

“(2) ‘Certificate’ means a certificate issued by the Mayor to an authorized recreational facility.

“(3) ‘Recreation facility’ means staffed Department of Parks and Recreation facilities.

“Sec. 3. AED program.

“(a) The Mayor shall develop and implement an AED program for each recreation facility within 45 days of the effective date of this act.

“(b) The program required under subsection (a) of this section shall include provisions that:

“(1) Ensure that an AED is provided on-site; and

“(2) An individual trained in the operation and use of an AED is present during hours of operation.

“(c) The Mayor shall establish guidelines for periodic inspections and annual maintenance of the automated external defibrillators to ensure each AED is maintained, operated, and tested according to manufacturers’ guidelines, including:

“(1) Written records of the maintenance and testing of each AED are maintained, as required; and

“(2) Proof that each individual who operates an AED for the authorized recreational facility has successfully completed an educational training course in conjunction with health

training already received by Department of Parks and Recreation employees and refresher training, as required.

“(d) The Mayor shall issue and renew certificates to recreation facilities that meet the requirements of this section.

“(e) The Mayor shall approve educational and training programs required under this section that:

“(1) Are conducted by any private or public entity;

“(2) Include training in cardiopulmonary resuscitation; and

“(3) May include courses from nationally recognized entities, such as the American Heart Association, the American Red Cross, and the National Safety Council.

“(f) The Mayor shall make best efforts to use uniform equipment pursuant to this act.

“Sec. 4. Immunities.

“(a) In addition to any other immunities available under statutory or common law, an authorized recreation facility is not civilly liable for any act or omission in the provision of automated external defibrillation if the authorized facility:

“(1) Satisfied the requirements for making automated external defibrillation available under section 3; and

“(2) Possesses a valid certificate at the time of the act or omission.

“(b) The AED program established under this act shall include tort immunity pursuant to section 4 of the Public Access to Automated External Defibrillator Act of 2001, effective April 27, 2001 (D.C. Law 13-278; D.C. Official Code § 44-233).”

Section 6(b) of D.C. Law 17-213 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) additions, see §§ 2 to 4 of AED Installation for Safe Recreation and Exercise Emergency Act of 2008 (D.C. Act 17-392, May 21, 2008, 55 DCR 6272).

For temporary (90 day) additions, see §§ 2 to 4 of AED Installation for Safe Recreation and Exercise Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-459, July 28, 2008, 55 DCR 8726).

Legislative history of Law 17-362. — For Law 17-362, see notes following § 44-231.

§ 44-232.02. Study to expand AED program throughout public facilities.

(a) The Mayor shall conduct a study examining the feasibility of installing AED devices in all District public facilities, including the District of Columbia Public Schools system and the Public Charter Schools. The study shall be submitted to the Council no later than 6 months following March 25, 2009.

(b) The study shall include:

(1) An evaluation of the available AED technologies, weighing advantages and disadvantages of these technologies, depending upon the characteristics of likely users within the public facility;

(2) An analysis of the optimum training program, to include cardiopulmonary resuscitation and AED operation, for obtaining maximum participation among potential rescuers;

(3) An analysis of the optimum program for maintenance and inspection of AEDs when placed throughout District of Columbia public facilities;

(4) A feasibility analysis for connecting AEDs, both those privately registered and those potentially placed throughout public facilities, to the District of Columbia emergency responder system;

(5) An examination of the AED programs in cities of comparable size or larger, including Baltimore, Philadelphia, and New York City;

(6) An analysis of the costs of different options for implementation, potential cost savings through training, and equipment alternatives; and

(7) An enumeration of the public facilities recommended for installation of AEDs.

(Apr. 27, 2001, D.C. Law 13-278, § 3b, as added Mar. 25, 2009, D.C. Law 17-362, § 2(c), 56 DCR 1211.)

Legislative history of Law 17-362. — For Law 17-362, see notes following § 44-231.

§ 44-233. AED use and tort immunity.

(a) Any person or entity who, in good faith and without compensation, uses an AED to provide emergency care or treatment shall be immune from civil liability for any personal injury resulting from the care or treatment, or resulting from any act or failure to act in providing or arranging further medical treatment, if the person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

(b) The immunity from civil liability provided under subsection (a) of this section shall extend to the licensed physician or medical authority involved in automated external defibrillator site placement, the person who provides training in CPR and the use of the automated external defibrillator, and the person or entity responsible for the site where the automated external defibrillator is located.

(c) The immunity from civil liability provided under this chapter shall not apply if the personal injury results from the gross negligence or the willful or wanton misconduct of the person providing the emergency care.

(d) This section expressly excludes from the provision of immunity designers, manufacturers, or sellers of automated external defibrillators who have claims brought against them based upon current District of Columbia law.

(e) A person who, in good faith and without compensation, uses a defibrillator at the scene of an emergency, and all other persons and entities providing services without compensation under this section, shall be immune from civil

liability for any personal injury that results from any act or omission in the use of the defibrillator in an emergency situation.

(f) The immunity from civil liability under this section shall not apply to a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional or within the scope of the employment or agency of the professional.

(g) In addition to any other immunities available under statutory or common law, the District is not civilly liable for any act or omission in the provision of automated external defibrillation if, at the time of the act or omission, the recreation facility possessed a valid recreation facility certificate.

(Apr. 27, 2001, D.C. Law 13-278, § 4, 48 DCR 1869; Mar. 6, 2007, D.C. Law 16-217, § 2(b), 53 DCR 10207; Mar. 25, 2009, D.C. Law 17-362, § 2(d), 56 DCR 1211.)

Effect of amendments. — D.C. Law 16-217, in subsec. (e), deleted the last sentence which read as follows: “This immunity shall apply only if the requirements of § 44-232 are fulfilled.”; and added subsec. (f).

D.C. Law 17-362 added subsec. (g).

Legislative history of Law 13-278. — For D.C. Law 13-278, see notes following § 44-231.

Legislative history of Law 16-217. — For Law 16-217, see notes following § 44-231.

Legislative history of Law 17-362. — For Law 17-362, see notes following § 44-231.

§ 44-234. Agency fund.

(a) There is established the Automated External Defibrillator Registration Fee Fund (“Fund”), as a non-lapsing, revolving fund, to be administered by the Mayor as an agency fund, as that term is defined in § 47-373(2)(I), and to be used exclusively for the purposes stated in § 44-232.

(b) The Fund shall be financed through registration fees generated pursuant to § 44-232 and regulations promulgated by the Mayor.

(c) The Fund shall be accounted for under procedures established pursuant to subchapter V of Chapter 3 of Title 47.

(Apr. 27, 2001, D.C. Law 13-278, § 5, 48 DCR 1869.)

Legislative history of Law 13-278. — For D.C. Law 13-278, see notes following § 44-231.

§ 44-235. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 may issue rules to implement the provisions of this chapter.

(Apr. 27, 2001, D.C. Law 13-278, § 6, 48 DCR 1869.)

Legislative history of Law 13-278. — For D.C. Law 13-278, see notes following § 44-231.

§ 44-236. Appropriations. [Repealed].

Repealed.

(Apr. 27, 2001, D.C. Law 13-278, § 7, 48 DCR 1869; Mar. 3, 2010, D.C. Law 18-111, § 7012, 57 DCR 181.)

Emergency legislation. — For temporary (90 day) repeal, see § 7012 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) repeal, see § 7012 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 13-278. — For D.C. Law 13-278, see notes following § 44-231.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

CHAPTER 3. GRIEVANCE PROCEDURES FOR HEALTH BENEFITS PLANS.

Subchapter I. Grievance and Appeals Procedure

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- 44-301.01. Definitions.
- 44-301.02. Medicare not applicable.
- 44-301.03. Establishment of grievance system.
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- 44-301.09. Assessment of insurers.
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Subchapter II. Access to Specialists as Primary Care Providers

- 44-302.01. Specialists as primary care providers.

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- 44-302.02. Standing referrals to specialists.
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Subchapter III. Notification of Health Care Provider Termination; Continuance of Coverage

- 44-303.01. When a health care provider leaves a plan.

Subchapter IV. Regulations and Standards

- 44-304.01. Regulations and standards; compliance.

Subchapter I. Grievance and Appeals Procedure.

§ 44-301.01. Definitions.

For the purposes of this chapter, the term

(1) "Director" means the Director of the Department of Health Care Finance."

(2) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in (i) placing the health of the individual in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

(3) "Grievance" means a written request by a member or a member representative for review of a decision of an insurer to deny, reduce, limit, terminate or delay covered health care services to a member.

(4) "Grievance decision" means a determination accepting or denying the basis or requested remedy of the grievance.

(5) "Health benefits plan" means a group or individual insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an insurer or subcontracting facility of an insurer for the purpose of providing, paying for, or reimbursing expenses for health related services. "Health benefits plan" does not include disability income or accident only insurance.

(6) "Health care services" means items or services provided under the supervision of a physician or other person trained or licensed to render health care necessary for the prevention, care, diagnosis, or treatment of human disease, pain, injury, deformity or other physical or mental condition including the following: pre-admission, outpatient, inpatient, and post-discharge care; home care; physician's care; nursing care; medical care provided by interns or

residents in training; other paramedical care; ambulance service and care; bed and board; drugs; supplies; appliances; equipment; laboratory services; any form of diagnostic imaging or therapeutic radiological services; and services mandated under Chapter 31 of Title 31.

(7) “Independent review organization” means an impartial, certified health entity engaged by the Director to review any adverse grievance decision by an insurer, including an insurer’s decision to deny, terminate, or limit covered health care services.

(8) “Insurer” means any individual, partnership, corporation, association, fraternal benefit association, hospital and medical services corporation, health maintenance organization, or other business entity that issues, amends, or renews group or individual health insurance policies or contracts, including health maintenance organization membership contracts in the District.

(9) “Member” means an individual who is enrolled in a health benefits plan.

(10) “Member representative” means any person acting on behalf of a member with the member’s consent.

(11) “Urgent medical condition” means a condition which, if not treated within 24 hours, could reasonably be expected to result in (i) placing the health of the individual in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

(Apr. 27, 1999, D.C. Law 12-274, § 101, 46 DCR 1294; Aug. 16, 2008, D.C. Law 17-219, § 5025, 55 DCR 7598.)

Prior Codifications. — 1981 Ed., § 32-571.1.

Effect of amendments. — D.C. Law 17-219, in par. (1), substituted “Department of Health Care Finance” for “District of Columbia Department of Health”.

Temporary Amendment of Section. — Section 2(a) of D.C. Law 19-63 added par. (10A) to read as follows:

“(10A) ‘Month’ means the period that runs from a given day in one month through the date preceding the numerically corresponding day in the next month.”.

Section 4(b) of D.C. Law 19-63 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Health Benefits Plan Grievance Emergency Amendment Act of 2011 (D.C. Act 19-166, October 11, 2011, 58 DCR 8898).

For temporary (90 day) amendment of section, see § 2(a) of the Health Benefits Plan Grievance Emergency Amendment Act of 2012 (D.C. Act 19-409, July 24, 2012, 59 DCR 9135).

Legislative history of Law 12-274. — Law 12-274, the “Health Benefits Plan Members Bill of Rights Act of 1998,” was introduced in Council and assigned Bill No. 12-501. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-607 and transmitted to both Houses of Congress for its review. D.C. Law 12-274 became effective on April 27, 1999.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 44-114.01.

Short title. — Short title: Section 5024 of D.C. Law 17-219 provided that subtitle J of title V of the act may be cited as the “Health Benefits Plan Members Bill of Rights Amendment Act of 2008”.

§ 44-301.02. Medicare not applicable.

(a) The provisions of subchapter I of this chapter shall not apply in cases directly involving coverage determinations or benefit requirements under the federal Medicare program. The provisions of subchapters II and III of this chapter shall not apply in cases directly involving federal Medicare benefits.

(b) Any complaint by a member involving coverage or benefits provided pursuant to the federal Medicare program shall be resolved in accordance with federal laws, regulations, and procedures established for fair hearings and appeals for the Medicare programs and with any appropriate District law.

(Apr. 27, 1999, D.C. Law 12-274, § 102, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.2. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.
Legislative history of Law 12-274. — For

§ 44-301.03. Establishment of grievance system.

(a) A member or member representative shall have a right to file a grievance with an insurer for a review of a decision to deny, reduce, limit, terminate or delay covered health care services. An insurer's health benefits plan shall include a grievance system that provides for the presentation and resolution of grievances brought by members or member representatives.

(b) A grievance system established pursuant to this section shall, at a minimum, incorporate the following components:

(1) The right of a member to file a grievance regarding any aspect of the insurer's health care services;

(2) A procedure for filing an appeal from a grievance decision;

(3) A standardized method of recording, documenting, and reporting the status of all grievances and appeals, which shall be maintained for at least 3 years;

(4) Availability of a member services representative to assist members with grievances upon request;

(5) The right of a member to designate an outside independent representative to assist the member or member representative in following the grievance procedures upon request;

(6) A specified time for responding to grievances not to exceed 45 business days from receipt of the grievance by the insurer;

(7) An oral and written procedure describing how grievances are processed and resolved;

(8) Procedures for follow-up action including the methods to be used to inform the member of resolution; and

(9) In the case of grievances regarding emergency or urgent medical conditions, procedures that will allow a member or member representative to immediately request expedited informal review in accordance with § 44-301.05 or expedited formal review in accordance with § 44-301.06.

(c) At the time a member first enrolls with an insurer, the insurer shall provide each member with written notice of the components required in subsection (b)(1) and (2) of this section, as well as the following information:

(1) The telephone numbers and business addresses of the insurer's representatives responsible for grievance resolution;

(2) A statement that describes a member's or member representative's right to contact the Director if dissatisfied with the resolution reached through the insurer's grievance system; and

(3) A statement that describes a Medicaid enrollee's right to appeal to the Office of Fair Hearings at any time, if applicable.

(d) In the case of a reduction or a termination of services that is contrary to the recommendations of the treating physician or advance practice registered nurse, an insurer shall provide a member or member representative with 24 hours prior verbal notification, followed by a written decision as soon as practical.

(e) An insurer shall include in the "evidence of coverage" and "member handbook" issued to members a description of the procedures for filing grievances and appeals.

(f) An insurer shall not take retaliatory action of any sort against a member who files a grievance pursuant to this section or an appeal pursuant to § 44-301.05.

(g) The Director may waive exhaustion of the grievance process required by §§ 44-301.05 and 44-301.06 as a prerequisite for proceeding to the external grievance process in cases of emergency or urgent medical conditions.

(Apr. 27, 1999, D.C. Law 12-274, § 103, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.3. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

Legislative history of Law 12-274. — For 301.01.

§ 44-301.04. Grievance process.

(a) A member or member representative may appeal any grievance decision resulting in a denial, termination, or other limitation of covered health care services in accordance with the provisions of this section.

(b) At the time a grievance decision is determined, an insurer shall provide to the affected member or member representative a written description of the procedures for filing grievances.

(c) The grievance process shall consist of 3 separate grievance levels: informal internal review by the insurer; formal review by the insurer; and formal external review by an independent review organization.

(d) Nothing in the health benefits plan shall prohibit a member or member representative from discussing or exercising the right to appeal pursuant to this section.

(Apr. 27, 1999, D.C. Law 12-274, § 104, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.4. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

Legislative history of Law 12-274. — For 301.01.

§ 44-301.05. Informal internal review.

(a) An insurer shall establish and maintain an informal internal grievance process whereby a member or member representative who is dissatisfied with any grievance decision made by an insurer may discuss and appeal the decision with the insurer's medical director or with the physician or health care provider designee who rendered the decision.

(b) An appeal conducted pursuant to this section shall be concluded by the insurer as soon as possible in accordance with the medical exigencies of the case. If an appeal is from a determination regarding urgent or emergency care, the insurer shall conclude the appeal within 24 hours of receiving notification of appeal from the member or member representative. All other concurrent or prospective appeals conducted pursuant to this section shall be concluded by the insurer within 14 business days.

(c) If an informal internal appeal is not resolved to the satisfaction of a member or member representative, the insurer shall provide the member or member representative with a written explanation of the decision and notify the member or member representative of the right to proceed to the next stage of the grievance process.

(d) At a minimum, the written explanation of the decision provided by the insurer pursuant to subsection (c) of this section shall include the following:

(1) The reviewer's understanding of the member's or member representative's grievance;

(2) The reviewer's decision in clear terms;

(3) The contract basis or medical rationale in enough detail for the member or member representative to understand and to respond to the insurer's position; and

(4) All applicable instructions, including the telephone numbers and titles of persons to contact and time frames to appeal the decision to the next stage of appeal.

(Apr. 27, 1999, D.C. Law 12-274, § 105, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.5. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

Legislative history of Law 12-274. — For

§ 44-301.06. Formal internal review.

(a) An insurer shall establish and maintain a formal internal appeals process whereby a member or member representative who is dissatisfied with a decision rendered in the informal appeals process can have the opportunity to pursue an appeal before a reviewer or panel of physicians, or advanced practice registered nurses, or other health care professionals selected by the insurer.

(b)(1) The reviewer or panel selected by the insurer pursuant to subsection (a) of this section shall not have been involved in the grievance decision under review.

(2) For all reviews requiring medical expertise, the reviewer or panel shall include at least one medical reviewer who is trained or certified in the same specialty as the matter at issue.

(3) A medical reviewer shall be a physician, or an advance practice registered nurse or other appropriate health care provider possessing a nonrestricted license to practice or provide care anywhere in the United States and have no history of disciplinary action or sanctions pending or taken against them by any governmental or professional regulatory body.

(4) A medical reviewer shall be certified by a recognized specialty board in the areas appropriate to review.

(c) All formal internal appeals shall be acknowledged by the insurer, in writing, to the member or member representative filing the appeal within 10 business days of receipt.

(d) All formal internal appeals shall be concluded as soon as possible after receipt by the insurer of all necessary documentation in accordance with the medical exigencies of the case. If the formal internal appeal is from a decision regarding urgent or emergency care, the insurer shall conclude the appeal within 24 hours notification of appeal by the member or member representative. All other appeals conducted pursuant to this section shall be concluded by the insurer within 30 business days; except, that the time may be extended at the request of a member or the member representative.

(e) If an insurer denies a member's or member representative's formal internal appeal, the insurer shall provide the member or member representative with a written explanation of the denial and written notification of his or her right to proceed to an external appeal. This notification shall include specific instructions as to how the member or member representative may arrange for an external appeal and shall also include any forms required to initiate the external appeal.

(f) At a minimum, the written explanation provided by the insurer of the determination pursuant to subsection (e) of this section shall include the following:

(1) The reviewer's understanding of the member's or member representative's complaint;

(2) The reviewer's decision in clear terms;

(3) The contractual basis or medical rationale in enough detail for the member or member representative to understand and to respond to the insurer's position; and

(4) All applicable instructions, including the telephone numbers and titles of persons to contact and time frames to appeal the decision to the next stage of appeal.

(g) In the event that the insurer fails to comply with any of the deadlines for completion of a formal internal appeal, the member or member representative shall be relieved of his or her obligation to complete the formal internal review process and may, at his or her option, proceed directly to the external appeals process required by § 44-301.07.

(Apr. 27, 1999, D.C. Law 12-274, § 106, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.6. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-

Legislative history of Law 12-274. — For 301.01.

§ 44-301.07. External grievance process.

(a) The Director shall establish and maintain an external appeals process whereby a member or member representative who is dissatisfied with a

decision rendered in a formal internal appeals process shall have the opportunity to pursue an appeal before an independent review organization.

(b) To initiate an external appeal, a member or member representative shall, within 30 business days from receipt of the written decision of the formal internal appeal panel, file a written request with the Director. The member or member representative shall submit a signed form allowing the insurer to release medical records of the member that are pertinent to the appeal.

(c) Upon receipt of the request for an external appeal, together with the executed release form, the Director shall determine whether:

(1) The individual was or is a member of the health benefits plan;

(2) The health care service which is the subject of the appeal reasonably appears to be a service covered by the health benefits plan;

(3) The member or member representative has fully complied with §§ 44-301.05 and 44-301.06 regarding informal and formal internal appeals; and

(4) The member or member representative has provided all information required by the independent review organization and the Director to make the preliminary determination, including the appeal form, and a copy of any information provided by the insurer regarding its decision to deny, reduce, or terminate a covered service, and the release form required pursuant to subsection (b) of this section.

(d) Upon completion of the preliminary review, the Director shall notify the member or member representative and insurer in writing as to whether the appeal has been accepted for processing. If the appeal is accepted by the Director, the Director shall assign the appeal to an independent review organization for full review. If the appeal is not accepted by the Director, the Director shall provide a statement of the reasons for the nonacceptance to the member or member representative and the insurer.

(e) The staff of the independent review organization that is assigned to the appeal pursuant to subsection (d) of this section, shall have meaningful prior experience in performing utilization review, peer review, quality of care assessment or assurance, or the hearing of appeals. Any independent review organization, its staff, and its professional and medical reviewers, shall not have any material, professional, familial, or financial affiliation with the insurer that is a party to the appeal.

(f) The Director may waive exhaustion of the appeals process required by §§ 44-301.05 and 44-301.06 as a prerequisite for proceeding to the external appeals process in cases of emergency or urgent care.

(g) The insurer shall provide timely access to all its records relating to the matter under review and to all provisions of the health benefits plan or health insurance coverage, including any evidence of coverage, "member handbook", certificate of insurance or contract and health benefits plan relating to the matter.

(h) Upon acceptance of the appeal for processing, the independent review organization shall conduct a full review to determine whether, as a result of the insurer's decision, the member was deprived of any service covered by the health benefits plan.

(i) The full review of an appeal of a health benefits decision shall be initially conducted by at least 2 physicians licensed to practice medicine in the District of Columbia, Maryland, or Virginia. On an exceptions basis, when necessary based on the medical, surgical, or mental condition under review, the independent review organization may select medical reviewers licensed anywhere in the United States who have no history of disciplinary action or sanctions pending or taken against them by any governmental or professional regulatory body.

(j) In reaching a determination, the independent review organization shall take into consideration all pertinent medical records, consulting physician reports, and other documents submitted by the parties, any applicable generally accepted practice guidelines developed by the federal government, national or professional medical societies, boards and associations, any applicable clinical protocols or practice guidelines developed by the insurer, and may consult with such other professionals as appropriate and necessary.

(k) The member or member representative and one insurer representative may request to appear in person before the independent review organization. The independent review organization shall conduct the hearing in the District of Columbia. The independent review organization's procedures for conducting a review, when the member or member representative or the insurer has requested to appear in person, shall include the following:

(1) The independent review organization shall schedule and hold a hearing as soon as possible after receiving a request from a member or member representative or from an insurer representative to appear before the independent review organization. The independent review organization shall notify the member or member representative and insurer representative, either orally or in writing, of the hearing date and location. The independent review organization shall not unreasonably deny a request for postponement of the hearing made by the member or member representative or insurer representative.

(2) A member or member representative and an insurer representative shall have the right to the following:

- (A) To attend the independent review organization hearing;
- (B) To present his or her case to the independent review organization;
- (C) To submit supporting material both before and during the hearing;
- (D) To ask questions of any representative of the independent review organization; and

(E) To be assisted or represented by a person of his or her choice.

(l) When necessary, the independent review organization shall consult with a physician or advance practice registered nurse trained in the same specialty or area of practice as the type of treatment that is the subject of the grievance and appeal. All final recommendations of the independent review organization shall be approved by the medical director of the independent review organization.

(m) The independent review organization shall complete its review and issue its recommended decision as soon as possible in accordance with the medical exigencies of the case. Except as provided for in this subsection, the

independent review organization shall complete its review within 30 business days, or 72 hours in the case of an expedited appeal, from the time the Director assigns the appeal to the independent review organization. An insurer shall provide all documentation to the independent review organization within 5 days of receipt of the notice of approval of the appeal by the Director, or within 24 hours of receipt of the notice of approval of the grievance, for an expedited review. If an insurer does not provide the independent review organization all documentation required by this subsection within the time frames, or obtain the necessary extensions, the independent review organization may decide the appeal without receiving the information. The independent review organization shall extend its review for a reasonable period of time as may be necessary due to circumstances beyond its or the insurer's control, but only when the delay will not result in increased medical risk to the member. In such an event, the independent review organization shall, prior to the conclusion of the initial review period, provide written notice to the member or member representative and to the insurer setting forth the status of its review and the specific reasons for the delay.

(n) If the independent review organization determines that the member was deprived of medically necessary covered services, the independent review organization shall recommend to the Director the appropriate covered health care services the member should receive. The Director shall forward copies of the recommendation to the member or member representative and the insurer.

(o) When necessary, the independent review organization shall refer a case for review to a consultant physician or other health care provider in the same specialty or area of practice who would generally manage the type of treatment that is the subject of the appeal. All final recommendations of the independent review organization shall be approved by the medical director of the independent review organization.

(p) The decision of the independent review organization shall be nonbinding on all parties and shall not affect any other legal causes of action.

(q)(1) This section shall not apply in cases directly involving Medicaid benefits.

(2) Any appeal brought pursuant to this section by a member involving coverage provided pursuant to the Medicaid program shall be resolved in accordance with federal and District of Columbia laws, regulations, and procedures established for fair hearings and appeals for the Medicaid program.

(Apr. 27, 1999, D.C. Law 12-274, § 107, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.7.

Temporary Amendment of Section. — Section 2(b) of D.C. Law 19-63, in subsec. (b), substituted “4 months” for “30 business days”; and rewrote subsec. (p) to read as follows:

“(p) The decision of the independent review organization shall be binding on all parties and enforceable by the Director, except to the extent that there are other remedies under District of Columbia or federal law.”

Section 4(b) of D.C. Law 19-63 provided that

the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Health Benefits Plan Grievance Emergency Amendment Act of 2011 (D.C. Act 19-166, October 11, 2011, 58 DCR 8898).

For temporary (90 day) amendment of section, see § 2(b) of the Health Benefits Plan Grievance Emergency Amendment Act of 2012 (D.C. Act 19-409, July 24, 2012, 59 DCR 9135).

Legislative history of Law 12-274. — For

legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

§ 44-301.08. Certification and general requirements for independent review organizations.

(a) Each independent review organization selected by the Director to review external appeals must be certified every 2 years by the Director.

(b) The Director shall be responsible for developing, applying, and enforcing certification standards for independent review organizations. These standards shall ensure that an independent review organization:

(1) Properly maintains a policy involving the review of the appeal in strict confidence pursuant to rules established by the Director;

(2) Uses only qualified professional and medical reviewers in any review; and

(3) Demonstrates an ability to render decisions in an equitable and timely manner and consistent with this chapter.

(c) An independent review organization may not be a subsidiary of, or in any way owned or controlled by a health benefits plan, insurer, or trade association of health care providers.

(d) The Director shall develop an application form for certifying an independent review organization that contains a description of the organization, including names, biographical sketches of all directors, officers, and executives of the organization.

(e) The independent review organization shall submit to the Director the following information, for purposes of creating a file of public records, upon initial application for certification, and thereafter upon any change to any of this information:

(1) The names of all stockholders and owners of more than 5% of any stock or options, if it is a publicly held organization;

(2) The names of all holders of bonds or notes in excess of \$100,000 if any;

(3) The names of all corporations and organizations that the independent review organization controls or is affiliated with and the nature and extent of any ownership or control, including the affiliated organization's type of business; and

(4) The names of all directors, officers, and executives of the independent organization, as well as a statement regarding any relationships the directors, officers, and executives may have with any health care plan, disability insurer, managed care organization, provider group or board or committee.

(f)(1) The independent review organization shall not have any material professional, familial, or financial conflict of interest with any of the following:

(A) The insurer;

(B) Any officer, director, or management employee of the insurer;

(C) The physician, the physician's medical group, or the independent practice association or the treating provider proposing the service or treatment;

(D) The institution at which the service or treatment would be provided;

(E) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the member whose treatment is under review.

(2) For the purposes of this subsection, the term “conflict of interest” shall not be interpreted to include a contract under which an academic medical center, or other similar medical research center, provides health services to the insurer’s member, except as subject to the requirement of paragraph (1)(D) of this subsection, affiliations which are limited to staff privileges at a health facility; or an independent review organization’s participation as a contracting insurer’s provider where the independent review organization is affiliated with an academic medical center, or other similar medical research center, that is acting as an independent review organization under this section.

(g) The independent review organization shall have a quality assurance mechanism in place that ensures the timeliness and quality of the reviews, the qualifications and independence of the experts, and the confidentiality of medical records and review materials.

(h) Neither an independent review organization nor an individual working for an external review panel pursuant to this chapter shall be held liable for any recommendation presented by the independent review organization, except in cases of gross negligence, recklessness, or intentional misconduct.

(i) An insurer, bound by the decision of the independent review entity, shall not be liable for following such decision. A determination by the independent review entity in favor of the insurer shall create a rebuttal presumption in any subsequent action at law that the insurer’s coverage determination was appropriate.

(j) The Director shall, from time to time, enter into contracts with as many independent review organizations as the Director deems necessary to conduct the external appeals. The contracts shall set forth all terms which the Director deems necessary to ensure a member’s right of appeal, including an assessment of separate costs to the insurer for the independent review organization review.

(k) As part of the contract process set forth in subsection (j) of this section, all independent review organizations shall submit to the Director and shall maintain a current list identifying all insurers, health care facilities, and other health care providers with whom the independent review organization maintains any health related business arrangements. The list shall include a brief description of the nature of any such arrangement.

(l) Upon receipt of any request for an external appeal, the Director shall assign that appeal to one of the approved independent review organizations on a random basis. The Director may reserve the right to deny any assignment to any independent review organization if the Director determines that making an assignment would result in a conflict of interest or would otherwise create an appearance of impropriety.

(m) The terms and conditions of a contract entered into pursuant to subsection (j) of this section shall provide that the reasonable direct costs of the external review process, not including costs of representation of a member, shall be paid by the insurer.

(Apr. 27, 1999, D.C. Law 12-274, § 108, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.8. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

§ 44-301.09. Assessment of insurers.

The Mayor shall assess all insurers to cover all the costs of administering this chapter. The Mayor shall promulgate regulations to determine the assessment formula.

(Apr. 27, 1999, D.C. Law 12-274, § 109, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.9. **Delegation of Authority.** — Delegation of authority pursuant to D.C. Law 12-274, the

Legislative history of Law 12-274. — For legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01. “Health Benefits Plan Members Bill of Rights Act of 1998”, see Mayor’s Order 99-159, October 13, 1999 (46 DCR 8842).

§ 44-301.10. Reporting requirements.

(a) Every insurer shall submit to the Director, an annual grievance report, that chronicles all grievance activity during the preceding year. The Director shall develop a system for classifying and categorizing grievances and appeals that all insurers and independent review organizations will use when collecting, recording, and reporting grievance and appeals information. The Director shall also develop a reporting form for inclusion in the annual grievance report that shall include the following information:

- (1) The name and location of the reporting insurer;
- (2) The reporting period in question;
- (3) The names of the individuals responsible for the operation of the insurer’s grievance system;
- (4) The total number of grievances received by the insurer, categorized by cause, insurance status, and disposition;
- (5) The total number of requests for expedited review, categorized by cause, length of time for resolution, and disposition; and
- (6) The total number of requests for external review, categorized by cause, length of time for resolution, and disposition.

(b) The Director shall provide current and aggregate information about each health benefits plan’s grievance and appeals activity to the public.

(c) The Director shall develop appropriate annual reporting requirements for independent review organizations.

(d) The Director shall submit an annual report to the Council and the public concerning the status of the grievance and appeal procedures of all health benefits plans in the District, including external appeals. The report shall summarize grievances by category and by health benefits plan and shall include the number of decisions upholding and reversing each grievance and the length of time for complete resolution of the grievance. The Director shall, based upon individual cases and the patterns of grievance and appeals activity,

include in the annual report recommendations concerning additional health consumer protections.

(Apr. 27, 1999, D.C. Law 12-274, § 110, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-571.10. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

Legislative history of Law 12-274. — For 301.01.

Subchapter II. Access to Specialists as Primary Care Providers.

§ 44-302.01. Specialists as primary care providers.

(a) A health benefits plan shall permit a member with chronic disabling or life threatening conditions to choose a health care specialist as the member's primary care provider. The specialist must be a participant in the health benefits plan and be available to attend to the member.

(b) A specialist chosen by a member pursuant to subsection (a) of this section, shall be permitted to treat the member without the member first receiving a referral from another health care provider. The specialist may authorize referrals, procedures, tests, and medical services subject to the terms of a treatment plan developed by the specialist and approved by the insurer.

(c) A health benefits plan shall permit a member with a chronic disabling or life threatening condition to have direct access to a specialist qualified to treat the condition, subject to initial referral by the member's primary care provider and a treatment plan approved by the member's primary care provider. Such treatment plan shall ensure that the member will receive covered medically necessary procedures, tests, and medical services.

(Apr. 27, 1999, D.C. Law 12-274, § 201, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-572.1. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

Legislative history of Law 12-274. — For 301.01.

§ 44-302.02. Standing referrals to specialists.

(a) In general, subject to subsection (b) of this section, a health benefits plan shall permit a member to receive medically necessary or appropriate specialty care for more than one visit without having to obtain the insurer's approval for subsequent visits authorized by a primary care provider.

(b) Subsection (a) of this section shall not apply to specialty care if the insurer informs the member, orally and in writing, of any limitation on the choice of participating providers with respect to such care.

(Apr. 27, 1999, D.C. Law 12-274, § 202, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-572.2. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.

Legislative history of Law 12-274. — For 301.01.

§ 44-302.03. Direct access to qualified specialists for females' health services.

(a) Every health benefits plan that requires or provides a member with the opportunity to designate a participating primary care provider, shall permit a member who is female to designate as her primary care provider a participating physician or advance practice registered nurse who specializes in obstetric and gynecology.

(b) If a member who is female does not designate a participating physician or advance practice registered nurse as described in subsection (a) of this section as her primary care provider, the health benefits plan may not require authorization or referral by the member's primary care provider, or otherwise, in order for the member to receive routine obstetrical or gynecological services from a participating obstetrician or gynecologist or advance practice registered nurse described in subsection (a) of this section.

(c) For the purposes of this section "routine obstetrical and gynecological services" means the full scope of medically necessary services provided by the obstetrician or gynecologist or advance practice registered nurse described in subsection (a) of this section in the care of, or related to, the female reproductive system and breasts and in performing annual screening and immunizations for disorders and diseases in accordance with nationally recognized medical practice.

(d) Nothing in this section shall prohibit an insurer or Health Maintenance Organization from requiring a participating obstetrician or gynecologist or advance practice registered nurse as described in subsection (a) of this section to provide written notification to the covered female's primary care physician of any visit to such obstetrician or gynecologist or advance practice registered nurse. The notification may include a description of the health care services rendered at the time of the visit.

(Apr. 27, 1999, D.C. Law 12-274, § 203, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-572.3. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-

Legislative history of Law 12-274. — For 301.01.

Subchapter III. Notification of Health Care Provider Termination; Continuance of Coverage.

§ 44-303.01. When a health care provider leaves a plan.

If a contract between an insurer and a health care provider is terminated by either party for any reason other than termination for failure to meet applicable quality standards of care or fraud, and a member is undergoing a course of treatment from the physician at the time of the termination, the insurer shall notify the member on a timely basis of the termination. When medically necessary, persons with serious illness undergoing a course of treatment or who are in the second trimester of a pregnancy shall be permitted to continue to receive medically necessary covered services, with respect to the

cause of treatment, by the physician or nurse midwife during a transitional period of at least 90 days from the date of the notice under the same terms and conditions as specified under the provider contract.

(Apr. 27, 1999, D.C. Law 12-274, § 301, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-573.1. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.
Legislative history of Law 12-274. — For 301.01.

Subchapter IV. Regulations and Standards.

§ 44-304.01. Regulations and standards; compliance.

(a) Within 120 days of April 27, 1999, the Director shall promulgate any regulations and standards as may be necessary to carry out the purposes of this chapter.

(b) Health benefits plans and insurers subject to this chapter shall comply with the regulations promulgated pursuant to subsection (a) of this section for contracts issued or renewed on or after 120 days from the promulgation of final regulations pursuant to subsection (a) of this section.

(Apr. 27, 1999, D.C. Law 12-274, § 401, 46 DCR 1294.)

Prior Codifications. — 1981 Ed., § 32-574.1. legislative history of D.C. Law 12-274, see Historical and Statutory Notes following § 44-301.01.
Legislative history of Law 12-274. — For 301.01.

CHAPTER 4. HEALTH SERVICES PLANNING.

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	44-420.01. Establishment of State Health Planning and Development Fund.
	44-421. Rules.
	44-422. [Repealed].

§ 44-401. Definitions.

For the purposes of this chapter, the term:

(1) "Acquiring of effective control" means:

(A) Any transfer, assignment or other disposition of 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of a corporation or other entity which is a HCF or is the operator or owner of a HCF;

(B) Any transaction which results in any person, or any group of persons acting in concert, owning or controlling, directly or indirectly, 50% or more of the stock, voting rights thereunder, ownership interest, or operating assets of such a corporation or other entity;

(C) Any transaction which results in any person, or any group of persons acting in concert, having the ability to elect or cause the election of a majority of the board of directors of such a corporation; or

(D) Any conversion which results in the selling, transferring, leasing, exchanging, conveying, or otherwise disposing of, directly or indirectly, all the assets or a material amount of the assets, as defined by § 44-602, of a nonprofit HCF to a for-profit entity whether a corporation, mutual benefit corporation, limited liability partnership, general partnership, joint venture, or sole proprietorship, including such an entity that results from, or is created in connection with, the conversion.

(2) "Annual Implementation Plan" means the plan prepared annually by the State Health Planning and Development Agency and the Statewide Health Coordinating Council to specify actions which will achieve the goals and objectives of the Health Systems Plan.

(2A)(A) "Bad debt" means an account receivable based on physician and hospital medical services furnished to any patient for which payment is:

(i) Expected, but is regarded as uncollectible following reasonable collection efforts; and

(ii) Not the obligation of any federal, state, or local governmental unit.

(B) The term "bad debt" does not include charity care.

(3) "Capital expenditure" means:

(A) Any expenditure by or on behalf of a health care facility, or by or on behalf of a person, which is, under generally accepted accounting principles, not properly chargeable as an expense of operation or maintenance and which exceeds \$2,500,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Hospital Construction Cost Index issued by the U.S. Department of Commerce;

(B) Any acquisition under a lease or comparable arrangement, or through any other type of transfer, which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been made at fair market value;

(C) Any acquisition under a lease or comparable arrangement, or through donation or through any other type of transfer by 2 or more persons acting in concert in which the aggregate cost of such acquisition would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition had been by purchase at fair market value, notwithstanding that the cost or value to each participating person of the acquisition would not, alone, otherwise constitute a capital expenditure under subparagraph (A) of this paragraph; and

(D) Any action or combination of related actions by a person or by 2 or more persons acting in concert which is taken for the purpose of acquiring, or otherwise results in the acquiring of effective control of a health care facility or any other corporation, partnership, or other entity which holds a certificate of need, and which would have constituted a capital expenditure under subparagraph (A) of this paragraph if the acquisition or intended acquisition had been by purchase at a fair market value.

(3A) "Charity care" means the physician and hospital medical services provided to persons who are unable to pay for the cost of services, especially those persons who are low-income, uninsured and underinsured, but excluding those services determined to be caused by, or categorized as, bad debt.

(4) Repealed.

(5) Repealed.

(6) Repealed.

(6A) "Department" means the Department of Health.

(6B)(A) "Diagnostic health care facility" means:

(i) A diagnostic imaging center accredited by the American College of Radiology whose primary business is the provision of diagnostic imaging services to the public;

(ii) A cardiac catheterization laboratory;

(iii) A radiation therapy facility; or

(iv) An independent diagnostic laboratory whose primary business is the provision of diagnostic imaging services to the public and at which at least 3 of the following exams are performed:

- (I) Magnetic resonance imaging;
- (II) CAT scan;
- (III) Nuclear medicine;
- (IV) Ultrasound;
- (V) X-ray; or
- (VI) Mammography.

(B) The term "diagnostic health care facility" shall not include the offices of private physicians, whether in individual or group practice.

(7) "Director" means the director of the SHPDA established by § 44-402.

(7A) "Director of the Department of Mental Health" means the Director of the Department of Mental Health established by § 7-1131.03.

(8) "District government" means the government of the District of Columbia.

(9) "Ex parte contact" means an oral or written communication not on the official record where reasonable contemporaneous notice to all parties is not given.

(9A) "Expedited administrative review" means a review conducted by the SHPDA staff, using the same criteria and standards that apply to projects reviewed through use of the regular process, the results of which are reported to the SHCC at the next regularly scheduled SHCC meeting.

(10) "Health care facility" ("HCF") means any private general hospital, psychiatric hospital, other specialty hospital, rehabilitation facility, skilled nursing facility, intermediate care facility, ambulatory care center or clinic, ambulatory surgical facility, kidney disease treatment center, freestanding hemodialysis facility, diagnostic health care facility home health agency, hospice, or other comparable health care facility which has an annual operating budget of at least \$500,000. "Health facility" shall not include Christian Science sanitariums operated, listed, and certified by the First Church of Christ Scientist, Boston, Massachusetts; the private office facilities of a health professional or group of health professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment, or a health care facility licensed or to be licensed as a community residence facility, or an Assisted Living Residence as defined by § 44-102.01.

(11) "Health Maintenance Organization" ("HMO") means a private organization which is a qualifying HMO under federal regulations or has been determined to be an HMO pursuant to rules issued by the SHPDA in accordance with this chapter.

(12) "Health service" means any medical or clinical related service, including services that are diagnostic, curative or rehabilitative, as well as those related to alcohol abuse, drug abuse, inpatient mental health services, home health care, hospice care, medically supervised day care, and renal dialysis. "Health service" shall not include those services provided by physicians, dentists, HMOs, and other individual providers in individual or group practice.

(13) "Health Systems Plan" ("HSP") means the comprehensive health plan prepared by the SHPDA and the SHCC in accordance with this chapter.

(14)(A)(i) "Major medical equipment" means:

(I) Equipment used for the provision of medical or other health services which is acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a health care facility, or by or on behalf of any private group practice of diagnostic radiology or radiation therapy, and which has a fair market value in excess of \$1,500,000; or

(II) A single piece of diagnostic or therapeutic equipment which is acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician or group of physicians (excluding those referenced in sub-subparagraph (I) of this paragraph), or an independent owner or operator of the equipment, and for which the cost or value is in excess of \$250,000.

(ii) The SHPDA may, by rule, adjust the thresholds specified in sub-subparagraph (I) of this paragraph annually to reflect the change in the Consumer Price index issued by the Bureau of Labor Statistics, United States Department of Labor.

(iii) The term "major medical equipment" shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and meets the requirements of § 1861(s)(10) and (11) of the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)).

(B) In determining whether medical equipment has a fair market value in excess of the amount specified in subparagraph (A) of this paragraph, the cost of studies, surveys, designs, plans, working drawings, specifications, site preparation, construction, related equipment, and other activities essential to the acquisition of the equipment shall be included.

(15) "New institutional health service" means:

(A) The construction, development, or other establishment of:

(i) A health care facility;

(ii) A home health or home nursing service;

(iii) Any new health service; or

(iv) A change in the licensed bed capacity of a facility by 10 beds or 10%, whichever is less, within a 2-year period.

(B) Any health service offered by or on behalf of a HCF and which was not offered on a regular basis by the HCF within the 12-month period prior to the time the service would be offered or which involves an operating budget of at least \$600,000 in direct costs for the first year of operation, except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the medical care component of the Consumer Price Index issued by the Bureau of Labor Statistics, U.S. Department of Labor, or which results in a capital expenditure in any amount.

(16) "Person" means an individual, a trust, or estate, a partnership, or a corporation (including associations, joint stock companies, and insurance companies), the District government, or an agency, subdivision, or instrumentality of the District government.

(17) "Social Security Act" means the Social Security Act, approved August 14, 1935, as amended (49 Stat. 520; 42 U.S.C. 301 et seq.)

(18) "Statewide Health Coordinating Council" ("SHCC") means the Statewide Health Coordinating Council established by § 44-403 to advise the State Health Planning and Development Agency on certain health planning functions as specified in this chapter.

(19) "State Health Planning and Development Agency" ("SHPDA") means the agency for the District of Columbia within the Commission of Public Health responsible for carrying out the District government's health planning and development program established by § 44-402.

(20) "Uncompensated care" means the cost of health care services rendered to patients for which the health care facility does not receive payment. The term "uncompensated care" includes bad debt and charity care, but does not include contractual allowances.

(Apr. 9, 1997, D.C. Law 11-191, § 2, 43 DCR 4535; Oct. 23, 1997, D.C. Law 12-32, § 12(a)(1), 44 DCR 4819; Apr. 20, 1999, D.C. Law 12-264, § 33, 46 DCR 2118; June 24, 2000, D.C. Law 13-127, § 1402, 47 DCR 2647; July 12, 2001, D.C. Law 14-18, § 8(1), 48 DCR 4047; Dec. 18, 2001, D.C. Law 14-56, § 116(i)(1), 48 DCR 7674; June 5, 2003, D.C. Law 14-307, § 2002(a), 49 DCR 11664; Mar. 13, 2004, D.C. Law 15-105, § 22(c), 51 DCR 881; Apr. 22, 2004, D.C. Law 15-149, § 2(a), 51 DCR 2802.)

Prior Codifications. — 1981 Ed., § 32-351.

Effect of amendments. — D.C. Law 13-127 in par. (10) added the phrase "or an Assisted Living Residence as defined by § 44-102.01" after the phrase "community residence facility".

D.C. Law 14-18 inserted par. (3A).

D.C. Law 14-56 repealed par. (5); added par. (7); and, in par. (12), substituted "inpatient mental health services" for "mental health". Par. (5) had read as follows: "(5) 'Commissioner of Mental Health' means the Commissioner of the District of Columbia Commission on Mental Health Services established by Mayor's Reorganization Plan No. 3 of 1986, effective January 3, 1987 (part B of subchapter VII of Chapter 15 of Title 1), and Mayor's Order No. 88-168, effective July 13, 1988."

D.C. Law 14-307 repealed pars. (4) and (6); and added par. (6A).

D.C. Law 15-105, in par. (7A), validated a previously made technical correction.

D.C. Law 15-149, added pars. (2A), (6B), (9A), and (20); in par. (3)(A), substituted "\$2,500,000" for "\$2,000,000"; in par. (10), substituted "the private office facilities of a health professional or group of health professionals, where the health professional or group of health professionals provides conventional office services limited to medical consultation, general non-invasive examination, and minor treatment," for "the private office facilities of a health professional,"; and rewrote par. (14)(A) which had read as follows: "(14)(A) 'Major medical equipment' means equipment which is used for

the provision of medical or other health services, which is acquired by or on behalf of a health care facility or by or on behalf of physicians, dentists, or other providers in individual or group practice and which has a fair market value in excess of \$1,300,000; except that the SHPDA may, by rule, adjust this threshold annually to reflect the change in the Consumer Price index issued by the Bureau of Labor Statistics, United States Department of Labor. "Major medical equipment" shall not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office or a hospital and it meets the requirements of § 1861(s)(10) and (11) under the Social Security Act, approved August 14, 1935 (49 Stat. 420; 42 U.S.C. 1395x(s)), or replacement equipment exempted under § 44-407(b)(4)."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(i)(1) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, November 3, 2001, law notification 48 DCR 10807).

For temporary (225 day) amendment of section, see § 2(a) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Section 3(a) of D.C. Law 16-298, in par. (10), substituted "treatment, a health" for "treatment, or a health", and substituted "community-based mental health services providers,

CPEP, and services directly operated by the Department of Mental Health.” for the period; in par. (12), deleted “inpatient mental health services,” substituted “HMOs,” for “HMOs, and” and substituted “group practice, and community-based mental health services providers, CPEP, and services directly operated by the Department of Mental Health.” for “group practice.”; and added pars. (3B) and (3C) to read as follows:

“(3B) ‘Community-based mental health services providers’ means organizations licensed or certified by the Department of Mental Health to provide community-based mental health services in accordance with the requirements of sections 113 and 114 of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56, D.C. Official Code §§ 7-1131.13 and 7-1131.14);

“(3C) ‘Comprehensive Psychiatric Evaluation Program’ or ‘CPEP’ means the observation, evaluation, and emergency treatment services operated by the Department of Mental Health in accordance with the requirements of section 104 (7) of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56, D.C. Official Code § 7-1131.04(7));”.

Section 5(b) of D.C. Law 16-298 provides that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(i)(1) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(i)(1) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(i)(1) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2002(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2002(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2(a) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see §§ 2(a), 3, and 4 of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2002(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2(a), 3, and 4 of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

For temporary (90 day) amendment of section, see § 3(a) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Emergency Act of 2006 (D.C. Act 16-529, December 4, 2006, 53 DCR 9833).

For temporary (90 day) amendment of section, see § 3(a) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-16, February 20, 2007, 54 DCR 1774).

Legislative history of Law 11-191. — Law 11-191, the “Health Services Planning Program Re-establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-086, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-347 and transmitted to both Houses of Congress for its review. D.C. Law 11-191 became effective on April 9, 1997.

Legislative history of Law 12-32. — Law 12-32, the “Healthcare Entity Conversion Act of 1997,” was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128 and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-127. — Law 13-127, the “Assisted Living Residence Regula-

tory Act of 2000,” was introduced in Council and assigned Bill No. 13-107, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 4, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-297 and transmitted to both Houses of Congress for its review. D.C. Law 13-127 became effective on June 24, 2000.

Legislative history of Law 14-18. — Law 14-18, the “Health Care Privatization Amendment Act of 2001”, was approved April 30, 2001 by the District of Columbia Financial Responsibility and Management Assistance Authority pursuant to section 207(c) of Public Law 104-8, and assigned DCFRMA-3. The Act was transmitted to both Houses of Congress by the Authority on May 7, 2001, for its review. The Authority gave notice to the Council by letter dated August 6, 2001 that the 30-day Congressional Review Period expired on July 11, 2001. D.C. Law 14-18 became effective on July 12, 2001.

Legislative history of Law 14-307. — Law 14-307, the “Fiscal Year 2003 Budget Support Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second read-

ings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 15-149. — Law 15-149, the “Health Services Planning and Development Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-388, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on January 6, 2004, and February 3, 2004, respectively. Signed by the Mayor on February 27, 2004, it was assigned Act No. 15-383 and transmitted to both Houses of Congress for its review. D.C. Law 15-149 became effective on April 22, 2004.

§ 44-402. State Health Planning and Development Agency; establishment and responsibilities.

(a)(1) There is established, in the Commission on Public Health, a State Health Planning and Development Agency (“SHPDA”).

(2) Revenues, not to exceed fees collected pursuant to § 44-420, shall be utilized to fund 4 staff positions to administer SHPDA (Project Review Division—Certificate of Need Division Chief; 2 Public Health Analysts; and Secretary). Additional staff may be funded, as necessary, in accordance with § 44-420.01.

(b) The SHPDA shall be responsible for health systems development in the District. The SHPDA’s responsibilities for health systems development shall include:

(1) The establishment and administration of a health systems plan development and implementation program in accordance with § 44-404;

(2) The establishment of a health data and information program in accordance with § 44-405;

(3) The administration, operation, and enforcement of the certificate of need program in accordance with this chapter;

(4) The monitoring of compliance by health care facilities with the requirements of this chapter; and

(5) Establishing, by rule, requirements and standards regarding the amount of uncompensated care provided to residents of the District of Columbia by all health care facilities that receive a certificate of need,

including an annual mechanism for monitoring the provision of that uncompensated care by the health care facilities.

(b-1)(1) The Director of the Department of Health shall convene a working group to develop recommendations to re-engineer the data collection, analysis, and certificate of need functions performed by SHPDA. The working group shall consist of the following:

- (A) Two representatives from the Department;
- (B) The Chairman of the Council, or his or her designee;
- (C) The Chairman of the Council's Committee on Human Services, or his or her designee;
- (D) One representative from the Department of Mental Health;
- (E) The Chairman of the Statewide Health Coordinating Council;
- (F) The Chairman of the Mayor's Health Policy Council;
- (G) One representative from the DC Hospital Association;
- (H) One representative from the Nursing Home Association;
- (I) One representative from the DC Primary Care Association;
- (J) Two public representatives to be appointed by the Director of the Department of Health; and
- (K) The Deputy Mayor for Children, Youth, Families and Elders, or his or her designee.

(2) The recommendations of the working group shall be submitted to the Council by no later than February 1, 2003.

(c) All regulations, rules, and procedures of the predecessor Office of Health System Development shall remain in effect until the adoption of superseding replacement of those regulations, rules and procedures.

(Apr. 9, 1997, D.C. Law 11-191, § 3, 43 DCR 4535; July 12, 2001, D.C. Law 14-18, § 8(2), 48 DCR 4047; June 5, 2003, D.C. Law 14-307, § 2002(b), 49 DCR 11664; Apr. 22, 2004, D.C. Law 15-149, § 2(b), 51 DCR 2802.)

Section references. — This section is referred to in § 44-401.

Prior Codifications. — 1981 Ed., § 32-352.

Effect of amendments. — D.C. Law 14-18, in subsec. (b), deleted "and" at the end of par. (3), substituted "; and" for the period at the end of par. (4), and added par. (5).

D.C. Law 14-307 redesignated subsec. (a) as subsec. (a)(1); added par. (2) of subsec. (a); and added subsec. (b-1).

D.C. Law 15-149 rewrote subsecs. (a)(2) and (b)(5).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2002(b) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of sec-

tion, see § 2002(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2(b) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see § 2(b) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2002(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2(b) of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

For temporary (90 day) amendment of section, see § 3 of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

§ 44-403. Statewide Health Coordinating Council; establishment and responsibilities.

(a) The SHPDA shall establish a Statewide Health Coordinating Council ("SHCC"), which shall consist of 15 members appointed by the Mayor, with the advice and consent of the Council of the District of Columbia.

(b) The SHCC shall:

- (1) Assist the SHPDA in the development of the HSP;
- (2) Review and make recommendations to the SHPDA on the HSP; and
- (3) Make recommendations to the SHPDA on an application for a certificate of need.

(c) The members appointed to the SHCC shall include:

- (1) Four consumers of health care services in the District who are not affiliated with any health care provider or facility;
- (2) Three public members;
- (3) Two representatives of incorporated associations of health care facilities in the District;
- (4) One physician representing an incorporated association of professional physicians in the District;
- (5) One nurse representing an incorporated association of professional nurses in the District;
- (6) One representative of an incorporated association of the health care insurance industry in the District;
- (7) Repealed;
- (8) Repealed; and
- (9) The Director of the Department of Mental Health, or his or her designee.

(d) Nongovernment members of the SHCC shall serve for a term of 3 years, except that of the nongovernment members initially appointed, 4 shall be appointed for a term of 3 years, 4 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of one year from the date the first members are installed. Thereafter, that date shall become the anniversary date for all appointments. Government representatives shall serve for the duration of their service in the positions stated in subsection (c)(6) and (7) of this section.

(e) A member of the SHCC may be reappointed, except that a member of the SHCC who is reappointed shall not serve more than 2 consecutive terms. A person may be reappointed to the SHCC following an absence of one year.

(f) Whenever a vacancy occurs as a result of a resignation, disability, death, more than 3 consecutive absences from regularly scheduled meetings, or for other reasons in an unexpired term on the SHCC, the Mayor shall appoint a

replacement to fill that unexpired term in the same manner specified in subsections (a), (b), and (c) of this section. A member appointed to fill an unexpired term shall only serve for the remainder of that term. The completion of the unexpired term shall not constitute a full term for the purposes of subsection (e) of this section.

(g) Every 2 years, the SHCC shall elect one of its members to serve as chairman, and may elect any other officers it requires. The SHCC may adopt rules of organization and procedure which it deems necessary and are not inconsistent with this chapter, in accordance with subchapter I of Chapter 5 of Title 2.

(h) Members of the SHCC shall receive no compensation, but may be reimbursed for actual expenses incurred in the performance of official duties in accordance with § 1-611.08.

(i) The powers, duties and functions of the predecessor Health Advisory Committee established by § 44-2003, [repealed] are transferred to the SHCC established by this chapter. The by-laws, regulations, and procedures of the predecessor Health Advisory Committee established by § 44-2003 [repealed] shall continue in force until new by-laws, rules, regulations, or procedures are issued by the SHCC established pursuant to this chapter.

(Apr. 9, 1997, D.C. Law 11-191, § 4, 43 DCR 4535; Dec. 18, 2001, D.C. Law 14-56, § 116(i)(2), 48 DCR 7674; June 5, 2003, D.C. Law 14-307, § 2002(c), 49 DCR 11664; Apr. 13, 2005, D.C. Law 15-354, § 99, 52 DCR 2638.)

Cross references. — Merit system, mayoral nomination of agency heads, council review and approval, see § 1-52

Prior Codifications. — 1981 Ed., § 32-353.

Effect of amendments. — D.C. Law 14-56, in subsec. (c)(9), substituted "Director of the Department of Mental Health" for "Commissioner of Mental Health Services".

D.C. Law 14-307, in subsec. (c), made a nonsubstantive change in par. (6), and repealed pars. (7) and (8).

D.C. Law 15-354, in subsec. (c), validated previously made technical corrections in pars. (7) and (8).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(i)(2) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, November 3, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(i)(2) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(i)(2) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(i)(2) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2002(c) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2002(c) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2002(c) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 44-401.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 44-401.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-404. Health systems plan; development, publication, updating, and implementation.

(a) The SHPDA, with the advice and recommendation of the SHCC, shall develop a proposed HSP, which shall be adopted in accordance with rules issued pursuant to § 44-421, to guide health policy in the District of Columbia. The HSP shall present data collected pursuant to § 44-405 to:

- (1) Articulate issues with respect to maintaining and improving the health of District of Columbia residents;
- (2) Demonstrate health care trends over multi-year periods;
- (3) Identify health needs of District of Columbia residents;
- (4) Identify needs of the health care delivery system; and
- (5) Prioritize health care issues.

(b) Where applicable, the SHPDA shall use the federal Healthy People 2010 Plan development guidelines, and subsequent federal Healthy People Plan guidelines, to develop the HSP of subsection (a) of this section and to address the health status and health systems goals of the Department of Health and data needs required to administer the SHPDA's certificate of need responsibilities under §§ 44-409 and 44-410.

(c) In carrying out its duties for the development of the HSP, the SHPDA shall:

- (1) Provide for public involvement in and evaluation of the development and implementation of the HSP, which shall include at least one public hearing;
- (2) Develop an Annual Implementation Plan ("AIP") for the implementation of the HSP;
- (3) Conduct informational and educational activities concerning the HSP and the AIP; and
- (4) Coordinate all health planning within the District of Columbia.

(d) Upon completion and promulgation of the final HSP, the SHPDA shall publish a notice of its completion and issuance in the District of Columbia Register and forward a copy of the final HSP to the District of Columbia Public Library.

(e) The HSP shall be reviewed annually, and amended as necessary, except that a new HSP shall be issued every 5 years. Upon the completion and promulgation of any new HSP, or any annual amendment to the HSP, the SHPDA shall submit copies to the Council and the District of Columbia Public Library, and shall publish a notice of its completion and issuance in the District of Columbia Register.

(Apr. 9, 1997, D.C. Law 11-191, § 5, 43 DCR 4535; Apr. 22, 2004, D.C. Law 15-149, § 2(c), 51 DCR 2802.)

Section references. — This section is referred to in § 44-402.

Prior Codifications. — 1981 Ed., § 32-354.

Effect of amendments. — D.C. Law 15-149 rewrote subsecs. (a), (b), and (e).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

§ 44-405. Reporting, analysis, and publication of utilization, financial, and other health-related data; regulations, reporting periods, format, and forms.

(a) The SHPDA shall develop and maintain the Health Planning Data System ("HPDS"). In order to implement the HPDS, as necessary for the development of the HSP, the SHPDA shall require each health care facility to submit, in writing or other uniform media, data related to the utilization, management, and financing of health services, including data on utilization of health services, cost of services, charges of services, patient demographic and characteristic information, and assurances of its provision of a reasonable volume of uncompensated care through the "annual compliance level" of 3% of its operating costs (total operating expenses of a facility as set forth in an audited financial statement or its equivalent, minus the amount of reimbursement, if any, under Titles XVIII and XIX of the Social Security Act).

(b) The SHPDA shall issue rules which identify the types of data required from HCFs and establish submission schedules and formats. The SHPDA may require HCFs to submit data in the absence of rules or in addition to submissions required by regulation upon the determination by the SHPDA that the data are reasonably necessary to enable the SHPDA to carry out the mission of this chapter. HCFs shall be given written notice of the data requirements. The notice shall include the basis upon which the requirements have been established.

(c) Submission of data by HCFs shall be in the form and format prescribed by the SHPDA and shall utilize forms which may be prescribed by the SHPDA.

(d) The SHPDA shall coordinate with public and private entities that collect data of the type described in this section in order to maximize the use of existing data sources and to minimize the duplication of data collection efforts.

(e) The SHPDA shall analyze data submitted and acquired and may publish data, analyses, and findings which identify major health policy issues.

(f) No application for a certificate of need shall be complete and no certificate of need shall be issued if the applicant has not submitted data as required.

(g) The SHPDA is authorized to establish a fee schedule for certain data, analyses, and reports available through SHPDA.

(Apr. 9, 1997, D.C. Law 11-191, § 6, 43 DCR 4535; Apr. 22, 2004, D.C. Law 15-149, § 2(d), 51 DCR 2802.)

Section references. — This section is referred to in §§ 44-402 and 44-404.

Prior Codifications. — 1981 Ed., § 32-355.

Effect of amendments. — D.C. Law 15-149 rewrote subsec. (a) and added subsec. (g). Prior to amendment, subsec. (a) had read as follows: "(a) The SHPDA shall develop and maintain the Health Planning Data System ('HPDS'). In order to implement the HPDS, the SHPDA shall require health care facilities to submit, in writing or other uniform media, data related to the utilization, management, and financing of

health services including data on utilization of health services, costs of services, charges of services, and patient demographic and characteristic information, as necessary for the development of the HSP and AIP."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 2(c) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see § 2(c) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2(c) of Health Services Planning and Development Emergency Amendment Act of

2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

References in text. — Titles XVIII and XIX of the Social Security Act, referred to in subsec. (a), are codified at 42 U.S.C. § 1395 et seq. and 42 U.S.C. § 1396 et seq., respectively.

§ 44-406. Certificate of need requirements.

(a) Except as provided in § 44-407, all persons proposing to offer or develop in the District a new institutional health service, or to obligate a capital expenditure to obtain an asset to be located in the District shall, prior to proceeding with that offering, development, or obligation, obtain from the SHPDA a certificate of need that demonstrates a public need for the new service or expenditure. Only those institutional health services or capital expenditures that are granted a certificate of need shall be offered, developed, or obligated within the District.

(b) Before there is a capital expenditure to acquire, either by purchase or under a lease or comparable arrangement, of an existing HCF or part of a HCF ("Transaction"), the person or persons acquiring control ("Proposed Owner") shall obtain a certificate of need from SHPDA. Subject to the provisions of paragraphs (5), (6), (7) and (8) of this subsection, SHPDA shall waive the procedures and review criteria set forth under § 44-409 and shall grant a certificate of need if all of the following conditions are met:

(1) The Proposed Owner shall provide written notification to SHPDA at least 60 days before the Transaction. The notification shall include the following:

(A) The names of the current owner(s) of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(B) The names of the Proposed Owner of the HCF, including, as applicable, all partners, controlling shareholders or members, directors, trustees and officers;

(C) The location(s) of the corporate office(s) of the Proposed Owner;

(D) The proposed governance structure and, if investor-owned, a description of the mechanism for ensuring community involvement in policy matters;

(E) A summary of the agreement setting forth the terms of the proposed Transaction, including the cost and means of financing the Transaction and a reasonably estimated projection of the impact of the transaction cost on charges for services to be provided;

(F) A description of any capital expenditures contemplated as a part of the Transaction;

(G) A reasonable projection of utilization and financial results for the HCF to include any expected material changes in the number of beds or

services, inpatient admissions, and outpatient visits, total facility revenues, and expenses for the two-year period following the Transaction; and

(H) A reasonably estimated projection of uncompensated care (bad debt and charity) and the nature of any proposed changes to admission policies and hours of operations over the two-year period following the Transaction.

(2) The Proposed Owner shall certify in writing, as part of the notification required in subsection (b)(1) of this section, that:

(A) For the five-year period following the Transaction, the percentage of uncompensated care (charity and bad debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the two fiscal years immediately preceding the acquisition;

(B) The Proposed Owner agrees to abide by all applicable conditions contained in certificates of need issued to the HCF, for such time and to such extent as those conditions would be applicable to the current owners in the absence of the Transaction; and

(C) All existing financial and admission policies affecting access to the HCF based upon a patient's ability to pay for services or treatment will be maintained for 2 years following transaction and will be consistent with existing law.

(3) If SHPDA determines that the notification is incomplete with respect to the information required under subsection (b)(1) and (2) of this section, SHPDA shall have 10 days from the filing of the notification to inform the Proposed Owner that the notification is incomplete, otherwise the information shall be deemed complete on the 11th day. The Proposed Owner must file the additional information within 15 days of such notification from SHPDA, provided that the initial filing date shall be deemed the filing date of the notification for all purposes of computation of time under this section.

(4) SHPDA shall call an information hearing, which shall be completed within 50 days following the filing of the notification provided under subsection (b)(1) of this section and after the Proposed Owner files additional information pursuant to subsection (b)(3) of this section. The hearing shall include a presentation by the Proposed Owner, describing its plans and addressing the certifications provided pursuant to subsection (b)(2) of this section, and receipt of testimony from affected persons.

(5) Except as otherwise provided in this subsection, SHPDA shall issue a certificate of need for the change in effective control no later than 60 days after the date of the initial filing with SHPDA of the notification required under subsection (b)(1) of this section by the Proposed Owner unless SHPDA finds, based upon clear and convincing evidence, the following:

(A) The Proposed Owner has not filed the notification described in subsection (b)(1) and (2) of this section;

(B) The Proposed Owner has not participated in the hearing required by subsection (b)(3) of this section;

(C) The notification is not reasonably consistent with the most current state health plan adopted in final form by SHPDA after April 9, 1997, or with any annual implementation plan for such state health plan;

(D) The notification is not reasonably consistent with the record of review;

(E) In the case of an investor-owner Proposed Owner, the mechanisms for local input in policy matters are not reasonable, except that such mechanisms shall not be required to be greater than those imposed upon comparable HCFs subject to CON review;

(F) The Proposed Owner is not financially sound or does not have the financial and management capability to operate the HCF being acquired; or

(G) The acquisition costs and projected operational costs would substantially and negatively impact the Proposed Owner's ability to comply with the certifications required under subsection (b)(2) of this section.

(6) SHPDA shall notify the Proposed Owner of any deficiency in the notification or of any proposed negative finding. If, by the 60th day, the Proposed Owner has not provided the required notification or addressed SHPDA's proposed negative findings, SHPDA shall, upon request by the Proposed Owner, provide the Proposed Owner a reasonable opportunity to provide additional information to SHPDA, to participate in the required hearing, or to complete its required notice in order to cure any negative finding. SHPDA shall act upon such additional submission within 15 days. If the Proposed Owner does not respond to the SHPDA notice of deficiency within 6 months of the notification from SHPDA, SHPDA shall close the proceeding. If, following submission by the Proposed Owner, SHPDA finds by clear and convincing evidence that any one or more of these standards is not met, SHPDA shall require that the Proposed Owner obtain a certificate of need in accordance with the provisions of § 44-409, except that the letter of intent and public hearing requirements shall be waived. If no action is taken by SHPDA within the initial prescribed 60-day time frame, the certificate of need shall be deemed to be issued and approved on the 61st day following the filing of the notification required in subsection (b)(1) of this section. If no action is taken by SHPDA within the additional 15-day time frame provided following an additional submission by the Proposed Owner under subsection (b)(5) of this section, the certificate of need shall be deemed to be issued and approved on the 16th day following the filing of the additional submission under this subsection (b)(5) of this section.

(7) In granting a certificate of need under this subsection, SHPDA shall impose no application or process requirements, apply any review criteria, or impose any conditions except as provided in subsection (b) of this section.

(8) The Office of Attorney General for the District of Columbia may seek injunctive relief from a court of competent jurisdiction if it determines that a person is operating an HCF in violation of the certifications made under this subsection.

(9) The requirements of this subsection shall be effective without adoption by SHPDA of implementing regulations.

(c) Any person proposing to close permanently or to terminate operation of a HCF or health service shall notify the SHPDA of the intention to close or terminate operation no later than 90 days prior to the proposed closing, and obtains its approval, and shall provide the SHPDA with any information that

may be requested as established in the rules promulgated to implement the provisions of this chapter. The information shall include, but not be limited to, the reasons for the closure or termination of operation, the number of patients to be affected by the closure, and the provisions being made to provide for their continuing care. When notice of closure of a HCF or health service is received, the SHPDA shall provide assistance for an orderly transition of the patient load to the extent possible.

(d) A conversion or acquiring of effective control, as defined in § 44-401(1), of a nonprofit HCF shall not be approved by the Attorney General for the District of Columbia unless charitable assets of the HCF have been adequately protected pursuant to the provisions of the Healthcare Entity Conversion Act of 1997.

(Apr. 9, 1997, D.C. Law 11-191, § 7, 43 DCR 4535; June 3, 1997, D.C. Law 12-32, § 12(a)(2), 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 64(a), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-356.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 12-32. — For

legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

References in text. — The “Healthcare Entity Conversion Act of 1997,” referred to in (d), is D.C. Law 12-32.

§ 44-407. Activities exempt from certificate of need review.

(a) HCFs and persons proposing projects exempted from certificate of need review must file with the SHPDA a letter of notice in accordance with rules promulgated pursuant to § 44-421.

(b) The following projects are exempt from certificate of need review:

(1) The upgrading, maintenance, or correction of facility deficiencies that may be in violation of federal and District of Columbia fire, building, and safety codes, or that will improve patient safety related to a pending violation of federal or District of Columbia fire, building, or safety codes;

(2) The correction of deficiencies identified by private national accrediting associations and District government licensing agencies;

(3) Nonpatient care projects requiring the obligation of a capital expenditure of less than \$8 million;

(4) The acquisition of the same or similar medical equipment to replace, upgrade, or expand the capacity of the equipment for which a certificate of need has been granted, if the replaced equipment is removed from service;

(5) The acquisition of major medical equipment to be used solely for research, new institutional health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research. This provision shall not preclude a HCF from seeking reasonable reimbursement for health care services provided under this exemption;

(6) Repealed.

(7) Any proposal to offer or develop a new institutional health service or obligate a capital expenditure which would otherwise be subject to this section, if the purpose of the service or expenditure is to accommodate a resident to be transferred from D.C. Village;

(8) The voluntary permanent reduction in the number in licensed bed capacity where a request for exemption is made 60 days before the reduction and the SHPDA finds that the reduction in bed capacity would not be inconsistent with the HSP;

(9) For a period of one year, commencing on December 18, 2001, any increase in the licensed psychiatric bed capacity by a private general hospital, psychiatric hospital, other specialty hospital or rehabilitation facility holding a certificate of need to operate psychiatric beds. The health care facility shall provide the Department of Mental Health with a copy of the letter of notice required by SHPDA for projects exempt from certificate of need review;

(10) The acquisition of major medical equipment or establishment of new institutional health services determined by the Department to be necessary for a declared public health purpose or deemed necessary by the Department to provide health care services under contract to or grant from a District of Columbia or federal agency. Participation in programs under Titles XVIII and XIX of the Social Security Act does not qualify as a District of Columbia or federal contract for purposes of this exemption;

(11) District of Columbia public, chartered, and private schools for any health care service offered or developed for students with special needs in compliance with the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 et seq.), the Rehabilitation Act of 1973, approved August 7, 1998 (112 Stat. 1092; 29 U.S.C. § 701 et seq.), or the Early and Periodic Screening, Diagnosis, and Treatment Program under Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or any other federal or District of Columbia legal requirements; and

(12) The acquisition, prior to October 1, 2003, of any single piece of diagnostic or therapeutic equipment which was acquired by lease, purchase, donation, or other comparable arrangement by or on behalf of a physician, a group of physicians, a private group practice of diagnostic radiology or radiation therapy, or a diagnostic health care facility, or the replacement of such equipment, so long as the equipment to be replaced is removed from service.

(13) Upon October 20, 2005, any increase in the licensed psychiatric bed capacity by a private general hospital, psychiatric hospital, or other specialty or rehabilitation hospital holding a certificate of need to operate psychiatric beds; provided, that the Department of Mental Health has requested such expansion specific to a reduction in psychiatric acute care services offered by Saint Elizabeth's Hospital.

(14) Changes in ownership, whether voluntary or involuntary, of the short-term, acute-care hospital known as the United Medical Center and a long-term acute-care hospital and a skilled-nursing facility at the same location, known as the Southern Avenue Facilities, shall be exempt from the certificate-of-need requirements for the purpose of:

(A) Allowing the transfer from the owner of record to another owner of all or a portion of the Southern Avenue Facilities;

(B) Notwithstanding any other provision of District law, allowing the owner of record, a subsequent owner, or caretaker, regardless of whether the transfer is voluntary or involuntary, to close or terminate a health service outside of the United Medical Center within 30 days after July 7, 2010; or

(C) Allowing the entity acquiring the United Medical Center to establish, within 90 days of July 7, 2010, a skilled-nursing facility with no more than 120 beds in the existing buildings located in the 1300 block of Southern Avenue, S.E.

(c) An HMO, or combination of HMOs, shall be exempt from certificate of need requirements if it meets the following requirements:

(1) The facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to the enrolled individuals; and

(2) At least 75% of the patients who can reasonably be expected to receive the health service will be individuals enrolled in the HMO or combination of HMOs.

(d) The District government is exempt from certificate of need requirements until January 1, 1998.

(e) Any proposal to offer or develop a new institutional health service, obligate a new capital expenditure, or reduce or terminate a health service that would otherwise be subject to certificate of need requirements, by a health care entity that has contracted with the District of Columbia Financial Responsibility Management Assistance Authority, or with the Mayor pursuant to § 7-1405, to provide new health care services shall be exempt from certificate of need requirements only for the purpose of maintaining the same level of care and services provided by the District of Columbia Health and Hospitals Public Benefit Corporation ("Public Benefit Corporation"). The exemptions granted by this subsection shall be for a period of 225 days from July 12, 2001, except that proposals to develop trauma I capability to match the levels existing at D.C. General Hospital as of January 1, 2001, shall be exempt from certificate of need requirements for a period of 1 year from July 12, 2001.

(f) The Administrator of the Health Care Safety Net Administration ("Administrator"), established pursuant to § 7-1401, shall determine which new institutional health services, capital expenditures, and reductions or terminations of health services qualify as health care services being taken over from the Public Benefit Corporation. The Administrator's authority to make determinations and the exemptions from certificate of need review pursuant to subsection (e) shall expire 1 year after the date the first contract for health care services entered into pursuant to § 7-1405 is signed.

(g) The District government and the Public Benefit Corporation are exempt from certificate of need requirements for any changes in health care service that may result from the abolishment of the Public Benefit Corporation.

(April 9, 1997, D.C. Law 11-191, § 8, 43 DCR 4535; July 12, 2001, D.C. Law 14-18, § 8(3), 48 DCR 4047; Dec. 18, 2001, D.C. Law 14-56, § 116(i)(3), 48 DCR

7674; Apr. 22, 2004, D.C. Law 15-149, § 2(e), 51 DCR 2802; Oct. 20, 2005, D.C. Law 16-33, § 5123, 52 DCR 7503; Sept. 14, 2011, D.C. Law 19-21, § 5150, 58 DCR 6226.)

Section references. — This section is referred to in § 44-406.

Effect of amendments. — D.C. Law 14-18 added subsecs. (e), (f) and (g).

D.C. Law 14-56, in subsecs. (b)(7) and (b)(8), made nonsubstantive changes; and added subsec. (b)(9).

D.C. Law 15-149, in subsec. (b), rewrote pars. (1), (3), and (4), repealed par. (6), made nonsubstantive changes in pars. (8) and (9), and added pars. (10), (11), and (12).

D.C. Law 16-33 added subsec. (b)(13).

D.C. Law 19-21 added subsec. (b)(14).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(i)(3) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, November 3, 2001, law notification 48 DCR 10807).

For temporary (225 day) amendment of section, see § 2(d) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Section 3(b) of D.C. Law 16-298 added par. (14) to subsec. (b), and amended subsec. (d) to read as follows:

“(14) Community-based mental health services providers, CPEP, and services directly operated by the Department of Mental Health.”

“(d) Community-based mental health services providers, CPEP, and the Department of Mental Health are exempt from certificate of need requirements.”

Section 5(b) of D.C. Law 16-298 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 17-91 added subsec. (b)(14) to read as follows:

“(14) A non-hospital-based substance abuse treatment facility shall be exempt from the certificate of need requirements, but shall continue to be subject to the certification requirements under section 5 of the District of Columbia Substance Abuse Treatment and Prevention Act of 1989, effective March 15, 1990 (D.C. Law 8-80; D.C. Official Code § 44-1204). This exemption shall expire 2 years from the effective date of the Health Services Planning Program Re-establishment Act Amendment Act of 2007, as introduced on September 17, 2007 (D.C. Bill 17-358).”

Section 4(b) of D.C. Law 17-91 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 18-225 added subsec. (b)(14) to read as follows:

“(14) The acquisition of the Washington Center for Aging Services by the Stoddard Baptist Home Foundation, Inc.”.

Section 4(b) of D.C. Law 18-225 provided that the act shall expire after 225 days of its having taken effect.

Section 201 of D.C. Law 18-254 added subsec. (b)(15) to read as follows:

“(15) Changes in ownership, whether voluntary or involuntary, of the short-term, acute-care hospital known as the United Medical Center and a long-term acute care hospital and a skilled nursing facility at the same location, known as the Southern Avenue Facilities, shall be exempt from the certificate of need requirements for the purpose of:

“(A) Allowing the transfer from the owner of record to another owner of all or a portion of the Southern Avenue Facilities;

“(B) Notwithstanding any other provision of District law, allowing the owner of record, a subsequent owner, or caretaker, regardless of whether the transfer is voluntary or involuntary, to close or terminate a health service outside of the United Medical Center within 30 days after the effective date of the Not-for-Profit Hospital Corporation Establishment Emergency Amendment Act of 2010, passed on emergency basis on June 29, 2010 (Enrolled version of Bill 18-877) (‘Hospital Act’); or

“(C) Allowing the entity acquiring the United Medical Center to establish, within 90 days of the effective date of the Hospital Act, a skilled nursing facility with no more than 120 beds in the existing buildings located in the 1300 block of Southern Avenue, S.E.”.

Section 303(b) of D.C. Law 18-254 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the East of Anacostia River Acute Care Hospital Services Emergency Amendment Act of 1999 (D.C. Act 13-189, November 22, 1999, 46 DCR 10412).

For temporary (90-day) amendment of section, see § 2 of the Public Benefit Corporation Certificate of Need Exemption Emergency Amendment Act of 2000 (D.C. Act 13-432, August 14, 2000, 47 DCR 7465).

For temporary (90 day) amendment of section, see § 2 of the Health Services Planning Program Emergency Amendment Act of 2000 (D.C. Act 13-473, November 7, 2000, 47 DCR 9644).

For temporary (90 day) amendment of section, see § 16(i)(3) of Department of Mental

Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(i)(3) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(i)(3) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2(d) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see § 2(d) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2(d) of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

For temporary (90 day) amendment of section, see § 5123 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 3(b) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Emergency Act of 2006 (D.C. Act 16-529, December 4, 2006, 53 DCR 9833).

For temporary (90 day) amendment of section, see § 3(b) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-16, February 20, 2007, 54 DCR 1774).

For temporary (90 day) amendment of section, see § 2 of Health Service Planning Program Re-establishment Emergency Amendment Act of 2007 (D.C. Act 17-137, October 17, 2007, 54 DCR 10727).

For temporary (90 day) amendment of section, see § 2 of Health Services Planning Program Re-establishment Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-250, January 23, 2008, 55 DCR 1257).

For temporary (90 day) amendment of section, see § 2 of Health Services Planning Program Re-establishment Emergency Amendment Act of 2010 (D.C. Act 18-442, June 17, 2010, 57 DCR 5401).

For temporary (90 day) amendment of section, see § 201 of Not-for-Profit Hospital Corporation Establishment Emergency Amendment Act of 2010 (D.C. Act 18-476, July 7, 2010, 57 DCR 6937).

For temporary (90 day) amendment of section, see § 201 of Not-for-Profit Hospital Corporation Establishment Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-541, October 4, 2010, 57 DCR 9615).

For temporary (90 day) amendment of section, see § 2 of Health Services Planning Program Re-establishment Emergency Amendment Act of 2010 (D.C. Act 18-597, November 17, 2010, 57 DCR 11016).

For temporary (90 day) amendment of section, see § 201 of Not-for-Profit Hospital Corporation Establishment Second Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-668, December 28, 2010, 58 DCR 106).

For temporary (90 day) amendment of section, see § 201 of Not-for-Profit Hospital Corporation Establishment Emergency Amendment Act of 2011 (D.C. Act 19-73, June 8, 2011, 58 DCR 5080).

For temporary (90 day) amendment of section, see § 201 of Not-for-Profit Hospital Corporation Establishment Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-128, August 1, 2011, 58 DCR 6772).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 14-18. — For Law 14-18, see notes following § 44-401.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 44-504.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

References in text. — Titles XVIII and XIX of the Social Security Act, referred to in subsec. (b)(10), are codified at 42 U.S.C. § 1395 et seq. and 42 U.S.C. § 1396 et seq., respectively.

§ 44-408. Activities subject to expedited administrative certificate of need reviews.

(a) Proposals for major medical equipment and new institutional health services for which there is an explicit finding of need in the HSP shall be eligible for expedited administrative review without referral to the SHCC, in accordance with rules promulgated pursuant to § 44-421.

(b) Any persons proposing projects subject to expedited administrative review shall file an application with the SHPDA in accordance with rules promulgated pursuant to section 22, provided that the HSP upon which the need is assessed is no more than 3 years old. If the HSP is more than 5 years old, such proposals shall be subject to standard certificate of need review.

(c) Administrative review decisions shall initially be made the SHPDA staff and shall be appealable to the Director of the SHPDA. The decision by the Director is the final decision of the SHPDA and is subject to appeal to the Board of Appeals and review in accordance with § 44-421.

(Apr. 9, 1997, D.C. Law 11-191, § 9, 43 DCR 4535.)

Prior Codifications. — 1981 Ed., § 32-358. legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.
Legislative history of Law 11-191. — For

§ 44-409. Adoption of procedures and criteria for review by the SHPDA governing application and review.

(a) All applications for a certificate of need shall be reviewed by the SHPDA.

(b) Existing procedures and criteria in effect on April 9, 1997, are valid insofar as they are not inconsistent with this chapter, until new rules of procedures and criteria are adopted.

(c) In accordance with § 44-421 the SHPDA shall establish, adopt, and publish procedures and criteria for the review of certificate of need applications, for new or renewal applications, for expedited administrative review, or for exemptions from review.

(d)(1) An application for a certificate of need shall be considered complete unless the SHPDA determines, within 15 days, excluding Saturdays, Sundays, and legal holidays, after receipt of an application, that the application is not complete and requests additional information which is relevant and necessary for the application to be complete. The application shall be considered complete upon the SHPDA's receipt of the applicant's response to any such request.

(2) The SHPDA shall issue its determination on an application for a certificate of need within 90 days after the date that the review process begins. If the SHPDA cannot issue its determination within that period, the review period may be extended for one additional period of 30 days.

(e) The SHPDA shall provide the applicant, the SHCC, and all previously appearing parties with a detailed explanation of any decision.

(f) The general public shall have access to all applications reviewed by the SHPDA and all other written materials essential to SHPDA's review contained in the SHPDA's files, except that the SHPDA shall establish a procedure to

restrict access of the general public from portions of applications or supporting documents which contain detailed descriptions of security systems, medical record systems, controlled storage systems or proprietary financial information. The SHPDA is authorized to charge reasonable fees for the costs of providing to the public documents covered under this subsection.

(g) In issuing a certificate of need, the SHPDA shall specify in the certificate the maximum amount of capital expenditures which may be obligated under the certificate. The SHPDA shall prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceeds the maximum specified in the certificate of need.

(h) The SHPDA may impose a condition upon the grant of a certificate of need if it is necessary to meet a criterion or standard previously adopted and published by the SHPDA. The SHPDA shall modify or remove a condition upon application at any time by the holder of the certificate of need or other person if the circumstances upon which the condition is premised change and no longer justify the condition, or if the condition, for any other reason, is no longer appropriate.

(i)(1) There shall be no ex parte contacts:

(A) In the case of an application for a certificate of need, between the applicant for a certificate of need, any person in favor of or opposed to the issuance of a certificate of need for the applicant, and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the applicant; or

(B) In the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of or opposed to the withdrawal and any person in the SHPDA who exercises any responsibility with respect to the application after the commencement of the hearing on the applicant's application and before a decision is made with respect to the application.

(2) In the case where no public hearing on the application has been requested, the period of prohibition of ex parte contacts shall begin upon the adjournment of any meeting convened by the SHCC at which the application is considered. Whether or not a hearing has been held, information presented at such meeting shall not be considered ex parte contacts if the meeting chairperson affords an opportunity for rebuttal. If there is to be no hearing or public meeting, the period of prohibition of ex parte contacts shall begin upon the SHPDA's determination to conduct a type of review for which no public meeting or hearing will be held.

(j) No certificate of need holder shall begin operation of the bed, facility, or health service approved in the certificate of need until the SHPDA has conducted a review to determine compliance with the certificate of need requirements. If the SHPDA does not make a finding of noncompliance within 30 days of receiving notification from the certificate of need holder of its intent to begin operation, the SHPDA shall be deemed to have determined compliance.

(k) SHPDA shall require that all prospective certificate of need applicants certify, in writing, that for the five-year period following the award of the certificate of need the percentage of uncompensated care (charity and bad-debt) provided each year to the population served by the HCF will be equal to or exceed the average of the percentage of uncompensated care provided by the HCF for the 2 fiscal years immediately preceding the review of an application for a certificate of need pursuant to this section.

(Apr. 9, 1997, D.C. Law 11-191, § 10, 43 DCR 4535; Oct. 23, 1997, D.C. Law 12-32, § 12(a)(3), 44 DCR 4819; Apr. 22, 2004, D.C. Law 15-149, § 2(f), 51 DCR 2802.)

Section references. — This section is referred to in §§ 44-404, 44-406, and 44-506.

Prior Codifications. — 1981 Ed., § 32-359.

Effect of amendments. — D.C. Law 15-149, in subsec. (c), inserted “for expedited administrative review,” following “renewal applications,” and deleted the last sentence which read: “The SHPDA develop special review procedures for proposed capital expenditures not directly related to patient care but which will increase the cost of patient care by more than 1%.”; rewrote subsec. (d)(2); in subsec. (e), deleted “which contradicts the recommendation of the SHCC” following “any decision”; and, in subsec. (f), added a new sentence which read; “The SHPDA is authorized to charge reasonable fees for the costs of providing to the public documents covered under this subsection.” Prior to amendment, subsec. (d)(2) had read as follows: “(2) The SHPDA shall issue its determination on an application for a certificate of need within 90 days after the date that the application is deemed complete or is considered complete pursuant to subsection (d)(1) of this section, or, in the case of complete review, 90 days after all applications to be considered during the review period are received. If the SHPDA cannot issue its determination within that period, the review period may be extended for one additional period of 30 days.”

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2(e) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(e) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see § 2(e) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2(e) of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 12-32. — For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

§ 44-410. Criteria for review and required findings.

(a) In order to grant a certificate of need, except for a certificate of need to decrease the bed capacity of a HCF, the SHPDA shall, upon review of an applicant, make a written finding that the proposed HCF, health service, major medical equipment, or capital expenditure meets the requirements of this chapter and any other requirements established by regulations. In addition, the SHPDA shall make the written finding that:

(1) The applicant is in compliance with all assurances made pursuant to § 603(e) of the Public Health Service Act, approved July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c et seq.); and

(2) The applicant, if it operates on a fee-for-service basis and has not given assurances pursuant to § 603(e) of the Public Health Service Act, approved

July 1, 1944, as amended (58 Stat. 682; 42 U.S.C. 291c), has given equivalent assurances, in writing, to the SHPDA and is in compliance with any assurances pursuant to this subsection in a previous certificate of need application.

(b) In adopting rules in accordance with § 44-421, the SHPDA shall adopt comprehensive, detailed rules to ensure that compliance with the assurances given pursuant to subsection (a) of this section is achieved and maintained by the applicant. The SHPDA may adopt identical or separate rules for facilities described in subsection (a) of this section.

(c) In conducting certificate of need review, the SHPDA shall utilize all appropriate criteria adopted by rules.

(d) The SHCC shall, in the performance of its review functions, follow procedures and apply criteria developed and published by the SHPDA and adopted by the SHCC.

(Apr. 9, 1997, D.C. Law 11-191, § 11, 43 DCR 4535; Apr. 22, 2004, D.C. Law 15-149, § 2(g), 51 DCR 2802.)

Prior Codifications. — 1981 Ed., § 32-360.

Effect of amendments. — D.C. Law 15-149, in subsec. (a), inserted “major medical equipment,” after “health service.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see § 2(f) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2(f) of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

§ 44-411. Duration, modification, sale, or transfer of a certificate of need.

(a) A certificate of need shall be effective for the period that the applicant states is necessary to complete the project for which the certificate of need is granted; except that no certificate of need shall be effective for more than 3 years from the original date of issuance. If the applicant is making good faith efforts to meet the schedule, the SHPDA shall extend the certificate of need for an additional period or periods as necessary for the applicant to complete the project. The SHPDA shall adopt rules to define the schedule of performance, including reporting, criteria for evaluating compliance or noncompliance with the schedule, and criteria for determining and reviewing major modifications after a certificate of need has been issued. Any review of major modifications shall be limited to the modifications and shall not affect the underlying certificate of need granted by the SHPDA.

(b) A certificate of need obtained prior to April 9, 1997 shall continue to be valid for the period specified in granting the certificate of need and may be renewed in accordance with subsection (a) of this section.

(c) A current certificate of need may not be sold or transferred. The transfer

of effective control over a project for which a current certificate of need has been granted shall cause the certificate of need to be subject to review and approval by the SHPDA. For the purposes of this subsection, the term "effective control" means the ability of any person, by reason of a direct or indirect ownership interest, whether of record or beneficial, in a corporation, partnership, or other entity which holds a certificate of need, to direct or cause the direction of the management or policies of that corporation, partnership or other entity, and the term "current certificate of need" means a certificate of need granted or deemed to have been granted by the SHPDA.

(d) Any transfer, assignment, or other disposition of 10% of the stock or voting rights thereunder of a corporation or other entity which is the operator of a HCF, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of the corporation which results in the ownership or control of more than 10% of the stock or voting rights thereunder of the corporation, by any person, when that corporation or entity holds a current certificate of need, shall cause the certificate of need to be subject to review and approval by the SHPDA.

(Apr. 9, 1997, D.C. Law 11-191, § 12, 43 DCR 4535.)

Prior Codifications. — 1981 Ed., § 32-361. legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.
Legislative history of Law 11-191. — For

§ 44-412. Reconsideration of review decisions.

(a) After a decision on an application for a new or renewal certificate of need is made by the SHPDA, the SHPDA shall notify the applicant, the SHCC, all previously appearing parties, and contiguous health planning agencies of the decision. The SHPDA shall give any person, for good cause shown, an opportunity within 30 days of the date of the notice to request reconsideration of a certificate of need decision at a public hearing before the SHPDA, which shall be held without charge. If a request demonstrates good cause, the SHPDA shall conduct a public hearing within 30 days of the request of reconsideration of the decision.

(b) For purposes of this section, the term "good cause" means:

(1) Presentation of significant and relevant information not previously considered by the SHPDA;

(2) Demonstration of a significant change in a factor or circumstance relied upon in reaching the decision;

(3) Demonstration of a material failure to follow SHPDA review procedures; or

(4) Presentation of another basis for a public hearing such as when the SHPDA determines that a hearing is in the public interest.

(c) If the SHPDA reconsiders a decision, it shall notify the persons requesting the hearing, the applicant, the SHCC, and all contiguous health planning agencies, and shall publish a notice of public hearing in at least 1 newspaper of general circulation. Any person may submit testimony at the hearing. Ex parte contact shall be prohibited after the commencement of the reconsideration.

tion hearing. A record of the hearing shall be made by the SHPDA and be available to the public upon request.

(d) Upon reconsideration, the SHPDA shall issue finding giving the basis for its decision. The SHPDA may affirm, modify, or reverse its original decision. The SHPDA shall render its final decision in writing by issuing or denying a certificate of need within 15 days following the public hearing. The final decision shall not be reconsidered.

(Apr. 9, 1997, D.C. Law 11-191, § 13, 43 DCR 4535.)

Section references. — This section is referred to in § 44-413.

Prior Codifications. — 1981 Ed., § 32-362.

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

CASE NOTES

In general.

A party who wishes to challenge a decision of the State Health Planning and Development Agency (SHPDA) on a decision on a certificate of need application may not bypass the reconsideration process; only after reconsideration by the SHPDA has been sought does the statute authorize an administrative appeal to the Board of Appeals and Review (BAR). *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

The State Health Planning and Development Agency was not bound to adhere to the agency's draft chapter's need projections when it reviewed application for certificate of need to establish a kidney dialysis center because the chapter was not part of a duly adopted health systems plan, and there was no evidence that the agency intended to be bound or acted as if it were bound by the draft chapter. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

§ 44-413. Administrative appeal.

(a) Following reconsideration by the SHPDA, or if the SHPDA denies a request for consideration, or has not granted a request for reconsideration pursuant to § 44-412(a) within 30 days after the request for reconsideration, the final decision of the SHPDA on the application for a certificate of need may be appealed by the SHCC, the applicant, or any previously appearing persons to the Office of Administrative Hearings.

(b) The Office of Administrative Hearings shall review the record and any additional evidence presented on behalf of the parties to the appeal. It shall take due account of the presumption of official regularity, the experience, and specialized competence of the SHPDA, and the purposes of this chapter. The Office of Administrative Hearings must make its written decision within 45 days of the conclusion of its review. The decision must be provided to the applicant, the SHPDA, the person requesting the hearing, and to any other person upon request. The decision of the Office of Administrative Hearings shall be considered the final decision of the SHPDA.

(c) Any contested case hearing required by § 2-509, shall be conducted by the Office of Administrative Hearings.

(Apr. 9, 1997, D.C. Law 11-191, § 14, 43 DCR 4535; Mar. 24, 1998, D.C. Law 12-81, § 17, 45 DCR 745; Apr. 13, 2005, D.C. Law 15-354, § 64(b), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-363.

Effect of amendments. — D.C. Law 15-354, in subsec. (a), substituted “to the Office of Administrative Hearings” for “to the Board of Appeals and review established by Organization Order 112, dated August 11, 1955 (C.O. 55-1500) (‘Board of Appeals and Review’)”, and deleted the last sentence which read: “This appeal must be made within 30 days of the date of the SHPDA’s final decision on reconsideration issued under 44-412(d) or, if the SHPDA does not grant a request for reconsideration, within 30 days of the date it denies a request for reconsideration.”; and, in subsecs. (b) and (c), substituted “Office of Administrative Hearings” for “Board of Appeals and Review”.

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 12-81. — Law 12-81, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

CASE NOTES

ANALYSIS

In general.
Jurisdiction.
Scope of review.

In general.

A party who wishes to challenge a decision of the State Health Planning and Development Agency (SHPDA) on a decision on a certificate of need application may not bypass the reconsideration process; only after reconsideration by the SHPDA has been sought does the statute authorize an administrative appeal to the Board of Appeals and Review (BAR). *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

Jurisdiction.

Jurisdiction of the Board of Appeals and Review (BAR) to review the final decision of the

State Health Planning and Development Agency on the application for a certificate of need to establish a kidney dialysis center included jurisdiction to review the denial by the SHPDA of a request for reconsideration of its decision on such an application. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

Scope of review.

The Court of Appeals’ review of the decision of the Board of Appeals and Review (BAR) is limited; as with other administrative agencies, the Court will inquire whether the BAR (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

§ 44-414. Judicial review of certificate of need decisions.

Any person who contests the final decision on an application for a certificate of need, or for exemption from certificate of need review under this chapter, after the exhaustion of all administrative remedies, is entitled to judicial review thereof upon filing in the District of Columbia Court of Appeals a written petition for review pursuant to § 2-510.

(Apr. 9, 1997, D.C. Law 11-191, § 15, 43 DCR 4535.)

Prior Codifications. — 1981 Ed., § 32-364.
Legislative history of Law 11-191. — For

legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

CASE NOTES

In general.

Decision of the Director of the State Health Planning and Development Agency (SHPDA) to

grant a certificate of need to applicant to establish a kidney dialysis center was based on substantial evidence and consistent with her

statutory and regulatory authority; Director considered the need projections of the draft chapter and those offered by the existing dialysis provider, along with the utilization survey conducted by SHPDA staff and other evidence regarding patient accessibility in order to de-

termine that a new dialysis facility was needed to improve quality and accessibility for patients and to enhance competition. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

§ 44-415. Certificate of need mandatory condition precedent.

The issuance of a certificate of need, if required under this chapter, shall be a condition precedent to the issuance of any license, permit, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project.

(Apr. 9, 1997, D.C. Law 11-191, § 16, 43 DCR 4535; Mar. 24, 1998, D.C. Law 12-81, § 18, 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 32-365.

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 44-403.

§ 44-416. Violations and penalties for noncompliance.

(a) It shall be unlawful for any person to proceed with any project which under this chapter would require a certificate of need without applying for and obtaining a certificate of need.

(b) The Office of [the] Attorney General for the District of Columbia may seek injunctive relief from a court of competent jurisdiction when it determines that a person is offering, developing, or operating a HCF or service in violation of this chapter.

(c) Any person, including the principal officers or agents of a corporation or association, who violates this chapter, or the rules issued pursuant to this chapter, by the willful failure to obtain a certificate of need, deviates from the provisions of a certificate of need, or beginning or continuing construction or initiating a new or expanded service after expiration of a certificate of need shall, upon conviction, be subject to a fine of not less than \$500 and not more than \$2,500. Each day of a continuing violation shall constitute a separate offense.

(d) Any person, including the principal officers or agents of a corporation or association, who knowingly fails to provide, or knowingly withholds, or intentionally provides misleading information required by this chapter, or the rules issued pursuant to this chapter, upon conviction, shall be subject to a fine of not less than \$500 and not more than \$2,500, or 10 days imprisonment, or both. Each day of a continuing violation shall constitute a separate offense.

(e) The SHPDA may, following a public hearing to ascertain the facts, withdraw a current certificate of need held by any person which the SHPDA finds has violated any provision of this chapter, or the rules issued pursuant to this chapter, regardless of the initiation of any criminal prosecution, suit for injunctive relief, or imposition of civil fine, penalty, or fee.

(f) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter or any rules issued under the authority of this chapter, pursuant to Chapter 18 of Title 2.

(g) The SHPDA shall, by rule, list each type of violation of this chapter which constitutes an infraction as described and shall list the fine, penalty, or fee to be imposed on a person for the first and for each subsequent violation.

(Apr. 9, 1997, D.C. Law 11-191, § 17, 43 DCR 4535; Apr. 13, 2005, D.C. Law 15-354, § 64(c), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-366.

Effect of amendments. — D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative history of Law 11-191. — For

legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-417. Immunity from civil liability.

No member of the SHCC or the SHPDA may be held personally liable in any civil action taken in the course of carrying out his or her official duties and responsibilities as set forth in this chapter or the rules issued pursuant to this chapter.

(Apr. 9, 1997, D.C. Law 11-191, § 18, 43 DCR 4535.)

Prior Codifications. — 1981 Ed., § 32-367.

Legislative history of Law 11-191. — For

legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

§ 44-418. Moratorium on applications.

The SHPDA may impose a moratorium for up to 120 days on the issuance of certificates of need for any specific type of new institutional health service, if the SHPDA requires additional time to develop and adopt criteria and standards for a new institutional health service. A moratorium may not apply to a certificate of need application which is pending before the SHPDA at the time of the imposition of the moratorium. A particular institutional health services may not be the subject of a moratorium more than once within any 12-month period.

(Apr. 9, 1997, D.C. Law 11-191, § 19, 43 DCR 4535.)

Prior Codifications. — 1981 Ed., § 32-368.

Legislative history of Law 11-191. — For

legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

§ 44-419. Annual report.

The SHPDA shall prepare and publish annually a report on the status of health systems development in the District, including the health plan development and implementation program, the health data and information program, and the certificate of need program. The report shall include a listing of the certificate of need reviews completed by SHPDA since the last report, a

general statement of the finding and decisions made in the course of reviews, and the status of pending reviews.

(Apr. 9, 1997, D.C. Law 11-191, § 20, 43 DCR 4535.)

Prior Codifications. — 1981 Ed., § 32-369. legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.
Legislative history of Law 11-191. — For

§ 44-420. Fees.

(a) The SHPDA shall collect application fees from persons that request a certificate of need. The fee required for an application shall be the greater of 3% of the proposed capital expenditure or \$5,000, with a maximum of \$300,000. The SHPDA is authorized to establish a fee schedule for certain data, analyses and reports published by the SHPDA from the HPDS. The annual user fee for private hospitals shall be \$4 per inpatient admission, based on the previous calendar year's admission data, to be paid to the SHPDA on a quarterly basis, in lieu of a certificate of need application fee. The certificate of need application fee for any project receiving funds through the Medical Homes DC initiative, as operated by the District of Columbia Primary Care Association, shall be \$5,000. User fees may also be established for other classes of facilities by regulation. SHPDA may adjust a user fee periodically to reflect the change in the Consumer Price Index issued by the Bureau of Labor Statistics, United States Department of Labor.

(b) Notwithstanding the provisions of subsection (a) of this section, the maximum application fee that may be collected from Specialty Hospitals of America, LLC, or certain of its subsidiary entities, for facilities located in Lots 3 and 4, Square 5919, related to the acquisition of Greater Southeast Community Hospital shall be \$300,000.

(Apr. 9, 1997, D.C. Law 11-191, § 21, 43 DCR 4535; June 5, 2003, D.C. Law 14-307, § 2002(d), 49 DCR 11664; Apr. 22, 2004, D.C. Law 15-149, § 2(h), 51 DCR 2802; Mar. 20, 2008, D.C. Law 17-116, § 2, 55 DCR 1280; June 5, 2008, D.C. Law 17-167, § 3, 55 DCR 5178.)

Prior Codifications. — 1981 Ed., § 32-370.

Effect of amendments. — D.C. Law 14-307 substituted "3% of the proposed capital expenditure or \$5,000, with a maximum of \$300,000" for "1% of the proposed capital expenditure or \$2, 000, with a maximum of \$25,000".

D.C. Law 15-149 added three new sentences at the end to read: "The annual user fee for private hospitals shall be \$4 per inpatient admission, based on the previous calendar year's admission data, to be paid to the SHPDA on a quarterly basis, in lieu of a certificate of need application fee. User fees may also be established for other classes of facilities by regulation. SHPDA may adjust a user fee periodically to reflect the change in the Consumer Price Index issued by the Bureau of Labor Statistics, United States Department of Labor."

D.C. Law 17-116 inserted "The certificate of

need application fee for any project receiving funds through the Medical Homes DC initiative, as operated by the District of Columbia Primary Care Association, shall be \$5,000."

D.C. Law 17-167 designated the existing text as subsec. (a); and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(g) of Health Services Planning and Development Temporary Amendment Act of 2003 (D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Section 3 of D.C. Law 17-71 designated the existing text as subsec. (a) and added subsec. (b) to read as follows: "(b) Notwithstanding the provisions of subsection (a) of this section, the maximum application fee that may be collected from Specialty Hospitals of America, LLC, or certain of its subsidiary entities, for facilities

located in Lots 3 and 4, Square 5919, related to the acquisition of Greater Southeast Community Hospital shall be \$300,000.”

Section 5(b) of D.C. Law 17-71 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2002(d) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2002(d) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 2(g) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) amendment of section, see § 2(g) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) amendment of section, see § 2002(d) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 2(g) of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

For temporary (90 day) amendment of section, see § 3 of East of the River Hospital Revitalization Emergency Amendment Act of 2007 (D.C. Act 17-168, October 19, 2007, 54 DCR 10978).

For temporary (90 day) amendment of section, see § 2 of Health Services Planning Pro-

gram Emergency Amendment Act of 2007 (D.C. Act 17-234, December 27, 2007, 55 DCR 238).

For temporary (90 day) amendment of section, see § 3 of East of the River Hospital Revitalization Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-249, January 23, 2008, 55 DCR 1255).

For temporary (90 day) amendment of section, see § 2 of Health Services Planning Program Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-319, March 19, 2008, 55 DCR 3430).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 44-401.

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

Legislative history of Law 17-116. — Law 17-116, the “Health Services Planning Program Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-362 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 23, 2008, it was assigned Act No. 17-259 and transmitted to both Houses of Congress for its review. D.C. Law 17-116 became effective on March 20, 2008.

Legislative history of Law 17-167. — Law 17-167, the “East of the River Hospital Revitalization Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-484 which was referred to the Committee on Health. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 14, 2008, it was assigned Act No. 17-341 and transmitted to both Houses of Congress for its review. D.C. Law 17-167 became effective on June 5, 2008.

§ 44-420.01. Establishment of State Health Planning and Development Fund.

(a) There is established as a nonlapsing, revolving fund in the Department of Health the State Health Planning and Development Fund (“SHPDA Fund”), to be administered by the Mayor as an agency fund as defined in § 47-373(2)(I), to which all fees, civil fines, and interest relating to the State Health Planning and Development Agency shall be deposited and credited.

(b) Revenues deposited into the SHPDA Fund shall not revert to the General Fund at the end of any fiscal year or at any other time but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (c) of this section, subject to authorization by Congress in an appropriations act.

(c) Subject to the applicable laws relating to the appropriation of District

funds, monies received by and deposited in the State Health Planning and Development Fund shall be for the sole use of the State Health Planning and Development Agency and from it shall be paid all salaries and all other expenses necessary in carrying out the duties of the SHPDA, except that annual user fees collected from hospitals pursuant to § 44-420 shall be used only for salaries and expenses necessary for carrying out the certificate of need responsibilities of the SHPDA. The Mayor shall be responsible for the deposit and expenditure of these monies.

(d) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the State Health Planning and Development Fund. The Mayor's budget request shall be based on an estimated projection of the expenditures necessary to perform the administrative and regulatory functions of the State Health Planning and Development Agency.

(Apr. 9, 1997, D.C. Law 11-191, § 21a, as added Apr. 22, 2004, D.C. Law 15-149, § 2(i), 51 DCR 2802.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(h) of Health Services Planning and Development Temporary Amendment Act of 2003

(D.C. Law 15-19, June 21, 2003, law notification 50 DCR 5463).

Legislative history of Law 15-149. — For Law 15-149, see notes following § 44-401.

§ 44-421. Rules.

The SHPDA shall, in accordance with subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 45-day period, the proposed rules shall be deemed approved.

(Apr. 9, 1997, D.C. Law 11-191, § 22, 43 DCR 4535.)

Section references. — This section is referred to in §§ 44-404, 44-407, 44-408, 44-409, and 44-410.

Prior Codifications. — 1981 Ed., § 32-371.

Emergency legislation. — For temporary (90-day) addition of §§ 32-381.1 to 32-381.17 (1981 Ed.), see §§ 2902 to 2918 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization of ap-

plicability of §§ 32-381.1 to 32-381.17 (1981 Ed.), see § 2920 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

Legislative history of Law 11-191. — For legislative history of D.C. Law 11-191, see Historical and Statutory Notes following § 44-401.

Resolutions. — Resolution 16-650, the "Provision of Uncompensated Care Rules Approval Resolution of 2006", was approved effective May 18, 2006.

§ 44-422. Applicability. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-191, § 22a, as added June 5, 2003, D.C. Law 14-307, § 2002(e), 49 DCR 11664; Mar. 25, 2009, D.C. Law 17-353, § 317, 56 DCR 1117.)

Cross references. — Dangerous dogs, “locally assisted housing accommodation for the elderly or handicapped” defined, see § 8-2201.

Long-term care ombudsman program, records, permitted access, see § 7-703.02.

Emergency legislation. — For temporary (90 day) addition of this section, see § 2002(e) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) addition of this section, see § 2002(e) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) addition of this section, see § 2(h) of Health Services Planning and Development Emergency Amendment Act of 2003 (D.C. Act 15-49, March 28, 2003, 50 DCR 2943).

For temporary (90 day) addition of this sec-

tion, see § 2(h) of Health Services Planning and Development Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-87, May 19, 2003, 50 DCR 4325).

For temporary (90 day) addition, see § 2(h) of Health Services Planning and Development Emergency Amendment Act of 2004 (D.C. Act 15-322, January 28, 2004, 51 DCR 1581).

Legislative history of Law 14-307. — For Law 14-307, see notes following § 44-401.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

CHAPTER 5. HEALTH-CARE AND COMMUNITY RESIDENCE FACILITY,
HOSPICE AND HOME CARE LICENSURE.

Subchapter I. Licensure

Sec.

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Subchapter II. Unlicensed Personnel Criminal Background Check

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44-552. Criminal background checks.

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Subchapter I. Licensure.

§ 44-501. Definitions.

(a) For the purposes of this subchapter the term:

(1) "Hospital" means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related services, for a variety of physical or mental conditions, and may in addition provide outpatient services, particularly emergency care.

(2) "Maternity center" means a facility or other place, other than a hospital or the mother's home, that provides antepartal, intrapartal, and postpartal care for both mother and child during and after normal, uncomplicated pregnancy.

(3) "Nursing home" means a 24-hour inpatient facility, or distinct part thereof, primarily engaged in providing professional nursing services, health-related services, and other supportive services needed by the patient/resident.

(4) "Community residence facility" means a facility that provides a sheltered living environment for individuals who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections. All residents of a community residence facility shall be 18 years of age or older, except that, in the case of group homes for persons with mental retardation, no minimum age shall apply, unless this requirement is waived in accordance with § 44-505(e).

(5) "Group home for persons with mental retardation" means a community residence facility that provides a home-like environment for at least 4 but no more than 8 related or unrelated individuals who on account of mental retardation require specialized living arrangements, and maintains the necessary staff, programs, support services, and equipment for their care and habilitation.

(6) "Hospice" means an agency, organization, facility, or distinct part thereof, primarily engaged in providing a program of in-home, outpatient, or inpatient medical, nursing, counseling, bereavement, and other palliative and supportive services to terminally ill individuals and their families.

(7) "Home care agency" means an agency, organization, or distinct part

thereof, other than a hospice, that provides, either directly or through a contractual arrangement, a program of health care, habilitative or rehabilitative therapy, personal care services, homemaker services, chore services, or other supportive services to sick individuals or individuals with disabilities living at home or in a community residence facility. The term "home care agency" shall not be construed to require the regulation and licensure of nonmedical services delivered by or through a religious organization on a small-scale, volunteer basis.

(8) "Ambulatory surgical facility" means any facility, other than a hospital or maternity center but including an office-based facility, at which there are performed outpatient surgical and related procedures that have been classified in accordance with § 44-504(h) due to their complexity or the degree of patient risk.

(9) "Renal dialysis facility" means any place, other than a hospital or the patient's home, that provides therapeutic care for persons with acute or chronic renal failure through the use of hemodialysis, peritoneal dialysis, or any other therapy that clears the blood of substances normally excreted by the kidneys.

(b) The Mayor shall have the authority to define variant types of facilities and agencies reasonably classified within the broader categories defined in subsection (a) of this section, and may issue rules under § 44-504 with respect to these subtypes. The Mayor shall make the final determination of whether a particular facility or agency falls within a category defined in subsection (a) of this section or a subtype defined by the Mayor pursuant to this subsection.

(c) When used throughout this act, the terms "facility" and "agency" and their plural forms shall, unless contextually inappropriate or subject to specific exception, apply to all of the facilities and agencies defined in subsection (a) of this section as well as those subtypes defined by the Mayor. The Mayor shall make the final determination of whether a provision is contextually inappropriate for a particular agency or facility.

(Feb. 24, 1984, D.C. Law 5-48, § 2, 30 DCR 5778; Mar. 14, 1985, D.C. Law 5-154, § 2(a), 32 DCR 7; Sept. 5, 1985, D.C. Law 6-26, § 2(a), 32 DCR 3615; Feb. 28, 1987, D.C. Law 6-215, § 2(a), 34 DCR 893; July 8, 1988, D.C. Law 7-131, § 3, 35 DCR 4106; Mar. 16, 1989, D.C. Law 7-199, § 3, 36 DCR 3; Mar. 24, 2007, D.C. Law 16-305, § 69, 53 DCR 6198.)

Cross references. — Funeral directors, list of funeral services establishments authorized to receive human remains for care or preparation, see § 3-405.

Health-care decisions, provider limitation, see § 21-2209.

Mentally retarded citizens rights, statement of purpose, see § 7-1301.02.

Section references. — This section is referred to in §§ 4-204.61, 4-205.49, 7-701.01, 7-832, 21-2202, 44-102.01, 44-151.01, 44-801, 44-1001.01, 44-1051.02, and 47-1261.

Prior Codifications. — 1981 Ed., § 32-1301.

Effect of amendments. — D.C. Law 16-

305, in subsec. (a), pars. (4) and (5), substituted "persons with mental retardation" for "mentally retarded persons", and in par. (7), substituted "individuals or individuals with disabilities" for "or disabled individuals".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Temporary Act of 1999 (D.C. Law 13-104, May 9, 2000, law notification 47 DCR 4341).

For temporary (225 day) amendment of section, see § 2 of Mandatory Autopsy for Deceased Wards of the District of Columbia and

Mandatory Unusual Incident Report Temporary Act of 2000 (D.C. Law 13-244, April 3, 2001, law notification 48 DCR 3486).

Section 7(b) of D.C. Law 13-244 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) authorization of autopsies, see § 3 of the Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Congressional Review Emergency Act of 2000 (D.C. Act 13-309, April 7, 2000, 47 DCR 2730).

For temporary (90-day) amendment of section, see § 2 to 4 of the Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Emergency Act of 2000 (D.C. Act 13-493, December 18, 2000, 48 DCR 65).

Legislative history of Law 5-48. — Law 5-48, "Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983," was introduced in Council and assigned Bill No. 5-166, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-154. — Law 5-154 was introduced in Council and assigned Bill No. 5-555, and was retained by the Council. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-219 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-26. — Law 6-26 was introduced in Council and assigned Bill No. 6-142, which was referred to the Committee on Consumer and Regulatory Affairs and reassigned to the Committee on Human Services. The Bill was adopted on first and second readings on May 28, 1985, and June 11, 1985, respectively. Signed by the Mayor on June 13, 1985, it was assigned Act No. 6-41 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-215. — Law 6-215 was introduced in Council and assigned

Bill No. 6-538, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 25, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-275 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-131. — Law 7-131 was introduced in Council and assigned Bill No. 7-469. The Bill was adopted on first and second readings on April 19, 1988 and May 3, 1988, respectively. Signed by the Mayor on May 19, 1988, it was assigned Act No. 7-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-199. — Law 7-199 was introduced in Council and assigned Bill No. 7-473, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on December 21, 1988, it was assigned Act No. 7-264 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-244. — Law 13-244, the "Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Temporary Act of 2000", was introduced in Council and assigned Bill No. 13-910. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-522 and transmitted to both Houses of Congress for its review. D.C. Law 13-244 became effective on April 3, 2001.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 44-102.01.

References in text. — "This act," referred to in the first sentence of subsection (c), is D.C. Law 5-48.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 5-48, the Health-Care and Community Residence Licensure Act of 1983, see Mayor's Order 2009-120, June 29, 2009 (56 DCR 6871).

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-238 and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "act" in the introductory language of (a).

CASE NOTES

Construction and application.

Under either District of Columbia or Maryland law, District of Columbia statute which prescribed procedures for evaluating qualifications of health care professionals for staff positions and clinical privileges was inappropriate

policy basis for claim of discharged professional corporation employee, who worked as vascular surgeon, that he was wrongfully discharged in violation of public policy, since law in question did not apply to private medical groups like corporation. *Lurie v. Mid-Atlantic Permanente*

Med. Group, P.C., 729 F.Supp.2d 304, 2010 U.S. Dist. LEXIS 80078 (2010).

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hos-

pital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

§ 44-502. License requirements.

(a) Except as provided in subsections (b), (c), and (d) of this section, it shall be unlawful to operate a facility or agency in the District of Columbia, whether public or private, for profit or not for profit, without being licensed by the Mayor.

(b) This subchapter shall not apply to a facility or agency operated by the federal government or, except in the case of community residence facilities, by and for the adherents of a church or religious denomination that, in accordance with established tenets, recognizes spiritual healing as the sole means of treating illness.

(c) Facilities and agencies that, prior to February 24, 1984, were not or would not have been subject to licensure in the District of Columbia may operate without a license until 6 months after the adoption of applicable rules under § 44-504.

(d) The continued operation of a facility or agency pending action by the Mayor on an application for licensure renewal or initial licensure under subsection (c) of this section shall not be deemed unlawful if a completed application was timely filed but, through no fault of the facility or agency or its governing body, staff, or employees, the Mayor has failed to act on the application before the expiration of the facility's or agency's current license or, under subsection (c) of this section, its authorized period of operation. A facility or agency operating under this subsection shall comply with all other provisions of this subchapter and rules adopted pursuant to this subchapter.

(e) Application forms shall list all certificates of approval, authority, occupancy, or need that are required as a precondition to lawful operation in the District of Columbia.

(f) A license shall be valid only for the premises stated on the license.

(g) Any change in the ownership of a facility or agency owned by an individual, partnership, or association, or in the legal or beneficial ownership of 10% or more of the stock of a corporation that owns or operates a facility or agency, shall be subject to written notice of the change being given to the governmental licensing authority at least 30 days prior to the change in ownership. Upon notification, the governmental licensing authority may, at its discretion, require reinspection and relicensure to ensure that the facility or agency will remain in compliance with the provisions of this subchapter, rules adopted pursuant to this subchapter, and all other applicable provisions of law.

(h) Unless sooner terminated or renewed, a license required by this subchapter shall expire one year from the date of issue or the last renewal.

(i) Each facility licensed under this subchapter shall post its license in a conspicuous place on the premises, and each agency licensed under this subchapter shall have its license readily available for inspection by the public.

(j) Any license issued pursuant to this section shall be issued as a Public Health: Health Care Facility endorsement or a Public Health: Human Services Facility endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Feb. 24, 1984, D.C. Law 5-48, § 3, 30 DCR 5778; Apr. 20, 1999, D.C. Law 12-261, § 2003(aa)(1), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(ee)(1), 50 DCR 6913; Apr. 13, 2005, D.C. Law 15-354, § 83(c)(1), 52 DCR 2638.)

Section references. — This section is referred to in § 44-504.

Prior Codifications. — 1981 Ed., § 32-1302.

Effect of amendments. — D.C. Law 15-38, in subsec. (j), substituted “Public Health: Health Care Facility endorsement or Public Health: Human Services facility endorsement to a basic business license under the basic” for “Class A Public Health: Health Care Facility endorsement or Class A Public Health: Human Services facility endorsement to a master business license under the master”.

D.C. Law 15-354, in subsec. (j), validated a previously made technical correction.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(ee)(1) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 44-202.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Editor’s notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-238 and the designation of the preexisting text as subchapter I, “subchapter” has been substituted for “chapter” near the beginning of (b), twice in the last sentence of (d) and (g), and in (h).

§ 44-503. Authority of Mayor.

(a) The Mayor shall:

(1) Ensure that licensing rules are consistent with certificate of need rules and that both are designed to facilitate the goals and objectives of the District of Columbia’s state health plan and certificate of need program; and

(2) Conduct an initial inventory of facilities to determine actual physical bed capacity and operating bed capacity.

(b) The Mayor shall have the authority to license bed capacity by specific, well-defined services. For hospitals, licensure by type of service shall be limited to the following categories: Medical/surgical; ICU/coronary care; OB/GYN; nursery; intermediate neonatal and neonatal intensive care; pediatrics; alcoholism/chemical dependency; rehabilitation; and psychiatric.

(Feb. 24, 1984, D.C. Law 5-48, § 4, 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-1303.

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Delegation of Authority. — Delegation of authority under Health-Care and Community

Residence Facility, Hospice and Home Care Licensure Act of 1983, see Mayor’s Order 84-105, June 19, 1984.

Delegation of authority pursuant to D.C. Law 5-48, the “Health Care and Community Residence License Act of 1983”, see Mayor’s Order 98-137, August 20, 1998 (45 DCR 6587).

Delegation of authority under Health-Care and Home Care Licensure Act of 1983, see and Community Residence Facility, Hospice Mayor's Order 84-105, June 19, 1984.

§ 44-504. Rules.

(a) The Mayor shall issue rules, consistent with other provisions of this chapter and pursuant to subchapter I of Chapter 5 of Title 2, establishing:

(1) License fees for private facilities and agencies reasonably calculated to reflect a facility's or agency's respective share of the cost of administering the provisions of this subchapter and rules adopted pursuant to this subchapter;

(2) Procedures deemed necessary to effectuate the purposes of this subchapter, including, but not limited to, procedures for:

(A) Issuing and renewing licenses;

(B) Obtaining variances;

(C) Ensuring that 6 months after the adoption of applicable rules under this subsection, licensure of all affected facilities and agencies shall be under the new rules;

(D) Waiving the inspection requirements of § 44-505(a) and (b) for those agencies that deliver services within the District of Columbia but are headquartered and licensed outside the District of Columbia, when, in the opinion of the Mayor, licensure by another jurisdiction constitutes sufficient evidence that the agency is in substantial compliance with District of Columbia law;

(E) Processing and following up on complaints by facility and agency staff, consumers, and advocates that are filed with the governmental licensing authority;

(F) Suspending or revoking the license of a facility or agency that is in violation of any provision of this subchapter, rule adopted pursuant to this subchapter, or other provision of District of Columbia or federal law, or whose governing body, chief executive officer, administrator, or director has made a material misrepresentation of fact to a government official with respect to the facility's or agency's compliance with any provision of this subchapter, rule adopted pursuant to this chapter, or other provision of District of Columbia or federal law; and

(G) Appealing from adverse licensure decisions;

(3) Standards for the construction and operation of each type of facility and agency, including standards governing: safety and sanitation of facilities; organizational governance and administration; employee and volunteer training, staff membership and delineation of clinical privileges (in addition to the standards set forth in § 44-507), and other personnel matters; diagnostic, therapeutic, emergency, anesthesia, laboratory, pharmaceutical, dietary, nursing, rehabilitation, social, emergency and non-emergency transportation, and other services; infection control; patient/client/resident care and quality assurance; recordkeeping; utilization review; and internal complaint and appeal procedures; and

(4) A statement of patients, 'clients,' and residents' rights and responsibilities for each type of facility and agency, including the right to non-discrimination in treatment or access to services based on reasons prohibited by Unit A of Chapter 14 of Title 2.

(b) Repealed.

(c) In formulating the standards and statements of rights and responsibilities required by subsection (a)(3) and (4) of this section, the Mayor shall, within 30 days after February 24, 1984, appoint an advisory task force for each type of facility and agency except ambulatory surgical facilities and renal dialysis facilities. Each task force shall be composed of consumers, providers, advocates, and government agency representatives, and shall be charged with the responsibility of making formal written recommendations within a time frame established by the Mayor. The Mayor shall give substantial consideration to each task force's recommendations and shall, on a continuing basis before adoption of proposed rules, maintain a dialogue with each task force while reviewing and acting on its recommendations.

(d) Where appropriate, standards adopted under subsection (a)(3) of this section may incorporate, in whole or in part, the standards of private accrediting bodies and standard-setting organizations, as well as the federal conditions of participation and standards for health-insurance and medical-assistance programs. Whenever the standards of a private accrediting body or standard-setting organization are revised and a copy is submitted to the Mayor, the Mayor shall evaluate the revised standards and determine whether any or all of them should be incorporated into new rules.

(e) Community residence facilities shall distribute a copy of the statement required by subsection (a)(4) of this section to each resident's parents, guardian, or other responsible person acting on his or her behalf. All other facilities shall conspicuously post copies of this statement near the main entrance and on every floor. Agencies shall distribute a copy of this statement to each patient/client upon the initial delivery of services. Each copy shall specifically state, in boldface, the address and telephone number of the appropriate in-house or intra-agency personnel and governmental authority to which complaints should be addressed.

(e-1) For nursing facility residents, the statement required by subsection (a)(4) of this section shall include, at a minimum, the right to:

(1) Be fully informed by the nursing facility of all resident rights and all facility rules governing resident conduct and responsibilities upon admission and annually thereafter;

(2) Either manage one's own personal finances, or be given a quarterly report of the resident's finances if this responsibility has been delegated in writing to the nursing facility;

(3) Be treated with respect and dignity and assured privacy during treatment and when receiving personal care;

(4) Not be required to perform services for the nursing facility that are not for therapeutic purposes, as identified in the plan of care for the resident;

(5) Associate and communicate privately with persons of the resident's choice, unless medically contraindicated;

(6) Send and receive personal mail, unopened by personnel at the nursing facility;

(7) Participate in activities of social, religious, and community groups at the discretion of the resident, unless medically contraindicated;

(8) Keep and use personal clothing and possessions, as space permits, unless to do so would infringe on other residents' rights or is medically contraindicated;

(9) Maintain, at the nursing facility, a private locker, chest, or chest drawer that is large enough to accommodate jewelry and small personal property and that can be locked by the resident;

(10) Be provided with privacy for visits by the resident's spouse or domestic partner, or, if spouses or domestic partners are both residents in the nursing facility, be permitted to share a room;

(11) Be free from mental or physical abuse;

(12) Be free from chemical and physical restraints except as authorized pursuant to federal or District law and regulation;

(13) Be transferred or discharged only for the grounds set forth in § 44-1003.01; and

(14) Be discharged from the nursing facility after:

(A) Receiving a consultation from a physician of the medical consequences of discharge; and

(B) Providing the administrator, physician, or a nurse of the nursing facility written notice of the desire to be discharged; provided, that if the resident is a minor or a guardian has been appointed for a resident, the written request for discharge shall be signed by the resident's guardian, unless there is a court order to the contrary.

(f) In setting standards under subsection (a)(3) of this section, the Mayor shall require that hospice and home care agency programs be centrally administered and organized to ensure effective coordination of all patient/client care services.

(g) Nothing in this section shall be construed to prohibit a facility or agency from supplementing the standards adopted under subsection (a)(3) of this section by establishing internal standards, policies, and procedures that promote safety and quality care, so long as they are reasonable and not inconsistent with this subchapter, rules adopted pursuant to this subchapter, or other District of Columbia law.

(h) For ambulatory surgical facilities, the rules required by subsection (a) of this section shall include a list of those outpatient surgical procedures that, if not performed in a hospital or, when appropriate, a maternity center, may be performed only in a facility licensed as an ambulatory surgical facility. In formulating this list of procedures before its publication as a proposed rule, the Mayor shall solicit input from a broad range of health professionals, relevant institutional providers, and other members of the public who are knowledgeable about ambulatory surgery or ambulatory surgical facilities. This list shall be periodically reviewed and updated by rulemaking pursuant to subchapter I of Chapter 5 of Title 2.

(h-1)(1) As part of the standards for nursing facilities required by subsection (a)(3) of this section, the Mayor shall require nursing facilities to:

(A) Maintain an organizational and staffing structure that promotes assignment of the same caregivers to care for the same residents as often as practicable;

(B) Except as provided in paragraph (2) of this subsection:

(i) Beginning January 1, 2011, have either a physician, physician assistant, or an advanced practice registered nurse, excluding the medical director, available on-site for a minimum of 0.2 hours per week for each resident at the facility; and

(ii) Beginning January 1, 2012, provide a minimum daily average of 4.1 hours of direct nursing care per resident per day, of which at least 0.6 hours shall be provided by an advanced practice registered nurse or registered nurse, which shall be in addition to any coverage required by sub-subparagraph (i) of this subparagraph;

(C) Provide annual training to all nursing home employees on the appropriate use of emergency transport and 911 services;

(D) Make each resident's attending physician's contact information readily available to facility staff as well as to each resident and his or her family or legal representative upon request;

(E) Provide employee training that addresses the special health care needs of the elderly and that addresses the needs of specific populations, including those characterized by:

- (i) Race;
- (ii) Ethnicity;
- (iii) Religious affiliation;
- (iv) Sexual orientation;
- (v) Gender; and
- (vi) Gender identity;

(F) Ensure that appropriate health care services are available on-site, as determined by the Department of Health, for the purpose of reducing the need to transport residents off-site for routine health services, including:

- (i) Podiatry;
- (ii) Rehabilitative services, such as physical therapy and occupational therapy;
- (iii) Wound care;
- (iv) Mental health;
- (v) Dialysis; and
- (vi) Substance-abuse treatment;

(G) Develop and maintain written policies and procedures governing the management and operation of the facility, which shall be required by the Department of Health as a component of licensure, reviewed by the Department of Health, and made available upon request, including policies and procedures governing:

- (i) Nursing services;
- (ii) Physician services;
- (iii) Emergency care;
- (iv) Dental services;
- (v) Ventilator services;
- (vi) Use of physical and chemical restraints;
- (vii) Infection control;
- (viii) Medication management;

- (ix) Podiatry services;
- (x) Dialysis services;
- (xi) Recreational services;
- (xii) Emergency water supply;
- (xiii) Laundry and linen management;
- (xiv) Fire and disaster preparedness; and
- (xv) Resident emergency and non-emergency transportation.

(H) Based on a resident's right to participate in resident and family groups (Requirements For Long Term Care Facilities, 42 C.F.R. § 483.15(c)), make available to any resident or family group:

- (i) Promotional and advertising assistance so that residents and residents' family members are aware of their right to convene groups;
- (ii) Adequate meeting space and logistical assistance;
- (iii) Information regarding policies and procedures for nursing home care, resident rights and responsibilities, and laws and rules that apply to the facility and its residents;
- (iv) Staff for the operation of each meeting, upon request; and
- (v) Written feedback and responses to recommendations and grievances;

(I) Ensure that a resident is seen by a physician within 72 hours of admission and has recorded in his or her medical record:

- (i) An evaluation of the resident's primary diagnoses;
- (ii) The resident's:
 - (I) Height;
 - (II) Weight;
 - (III) Mental health status; and
 - (IV) Personal care needs;

(iii) Whether it is medically contraindicated for the resident to participate in:

- (I) Physical;
- (II) Recreational; or
- (III) Rehabilitative activities; and
- (iv) An evaluation of any existing:
 - (I) Medical care plan;
 - (II) Treatment orders; and
 - (III) Medications;

(J) Obtain a medical order from the resident's attending physician, the facility's medical director, an on-staff physician, or advanced practice registered nurse if a resident requires medical treatment prior to calling 911; provided, that a prior medical order shall not be required if it is determined that there is a situation that requires an immediate transfer to a hospital; provided further, that if a nursing facility does not obtain a required medical order prior to calling 911, the facility shall document in the resident's medical record why obtaining a medical order was not practicable; and

(K) Conduct a discharge assessment within 14 days of admission, and biannually thereafter, that includes:

- (i) A time frame for discharging the resident to return home or to another facility; and

(ii) If the resident is likely to be discharged within 6 months of the discharge assessment, a discharge plan.

(2) The Department of Health shall have the authority to adjust the staffing requirements and formulas set forth in paragraph (1)(B)(i) and (ii) of this subsection based on the individual needs of a nursing facility; provided, that the staffing requirements set forth in paragraph (1)(B)(ii) of this subsection shall never be less than 3.5 hours of direct nursing care per resident per day.

(i)(1) As part of the standards for hospitals and renal dialysis facilities required by subsection (a)(3) of this section, the Mayor shall establish standards and procedures with respect to:

(A) The labeling, handling, transporting, storage, routine inspection, and preventive maintenance of dialysis equipment;

(B) The reprocessing and reuse of hemodialyzers, dialysate port caps, and blood port caps;

(C) Water purification and quality;

(D) The flushing of residues from potentially toxic sterilants and disinfectants used during manufacture or reprocessing;

(E) The facility's responsibility to ensure individualized treatment, including the most appropriate choice of equipment for each patient and, for patients exhibiting hypersensitivity, the use of biocompatible membranes;

(F) The reporting of equipment failures and occurrences of pyrexia, sepsis, or bacteremia;

(G) The training, minimum qualifications, and supervision of dialysis staff; and

(H) The training and support provided to self-dialysis and home dialysis patients.

(2) The standards and procedures required by paragraph (1) of this subsection shall not be less stringent than the guidelines set forth in the July 28, 1986, Recommended Practice for Reuse of Hemodialyzers published by the Association for the Advancement of Medical Instrumentation ("AAMI Recommended Practice") and the recommendations of the Centers for Disease Control referenced in those guidelines ("CDC Recommendations").

(3) Until the standards and procedures required by paragraph (1) of this subsection become enforceable through licensure, hospitals and renal dialysis facilities shall comply with the AAMI Recommended Practice, except that, where there are CDC Recommendations, hospitals and renal dialysis facilities shall comply with the CDC Recommendations.

(4) No hospital or renal dialysis facility shall reuse blood tubing or transducer protectors.

(5) No hospital or renal dialysis facility shall reuse a hemodialyzer or dialyzer caps on a patient unless that patient has first signed a written consent form after having been orally advised by a physician of the potential risks, benefits, and uncertainties surrounding reuse and the disinfection process. The advising physician shall not be a medical director of the facility or dialysis unit, nor shall he or she have a financial interest in the facility. The information conveyed shall consist of a full and fair presentation of represen-

tative opinions from those in the medical community who have expressed concerns about reuse practices, and those who support these practices. Any discussion of "first-use syndrome" shall include information about advances in biocompatible-membrane technology.

(6) Dialysis patients shall have the following nonwaivable rights, to be supplemented by the statement of rights and responsibilities established by the Mayor pursuant to subsection (a)(4) of this section:

(A) To revoke or limit, either orally or in writing, a previously executed reuse consent at any time and for any reason;

(B) To be informed before each dialysis treatment of the number of times the dialyzer and dialyzer caps have been previously used;

(C) To have documented in their patient-care records all consents to reuse, refusals to consent, revocations of consent, and limitations placed upon consent;

(D) To have unrestricted access to their patient-care records;

(E) To make the reuse-content decision in an environment devoid of threats, intimidation, or retaliation by the facility or its staff; and

(F) Except as provided by paragraph (7) of this subsection, to remain at a facility and receive treatments with a new, state-of-the-art dialyzer and new dialyzer caps whenever consent to reuse is refused or revoked or reuse is prohibited by limitations placed upon consent.

(7) A hospital or renal dialysis facility may transfer or decline to admit a patient on account of that patient's refusal to consent to the reuse of hemodialyzers or dialyzer caps only if:

(A) The Mayor certifies that the facility is currently in full compliance with this subsection and all other District of Columbia laws that regulate, either directly or indirectly, the reprocessing and reuse of hemodialyzers and dialyzer caps;

(B) The facility, in cooperation with a patient-care ombudsman designated by the Mayor, identifies and secures a permanent placement for the patient in an alternative facility within the District of Columbia where that patient will be provided the option of receiving each treatment with a new, state-of-the-art dialyzer and new dialyzer caps; and

(C) The patient-care ombudsman designated by the Mayor finds that the patient can obtain equally reliable transportation to and from the alternative facility without suffering extreme physical, psychological, or financial hardship.

(8) Paragraphs (3) through (7) of this subsection shall be applicable and enforceable with respect to all hospitals and renal dialysis facilities, whether licensed or temporarily exempt from licensure under § 44-502(c), immediately on February 28, 1987.

(j) The proposed rules, except those rules that establish or modify license fees as described in subsection (a) of this section, shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in

this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(k) Any license issued pursuant to this section shall be issued as a Public Health: Health Care Facility endorsement or a Public Health: Human Services Facility endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Feb. 24, 1984, D.C. Law 5-48, § 5, 30 DCR 5778; Sept. 5, 1985, D.C. Law 6-26, § 2(b)-(d), 32 DCR 3615; Feb. 28, 1987, D.C. Law 6-215, § 2(b), (c), 34 DCR 893; Oct. 1, 1992, D.C. Law 9-168, § 2(a), (b), 39 DCR 5822; Apr. 20, 1999, D.C. Law 12-261, § 2003(aa)(2), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(ee)(2), 50 DCR 6913; Apr. 13, 2005, D.C. Law 15-354, § 83(c)(2), 52 DCR 2638; Oct. 20, 2005, D.C. Law 16-33, § 5002, 52 DCR 7503; Apr. 29, 2010, D.C. Law 18-145, § 3(a), 57 DCR 1834.)

Cross references. — Nursing homes and community residence facilities protections, appointment of receivers, see § 44-1002.02.

Nursing homes and community residence facilities protections, damages, fines and penalties, and retaliatory actions, see § 44-1004.03.

Nursing homes and community residence facilities protections, injunctions, see § 44-1004.01.

Section references. — This section is referred to in §§ 44-501, 44-502, 44-505, 44-506, and 44-509.

Prior Codifications. — 1981 Ed., § 32-1304.

Effect of amendments. — D.C. Law 15-38, in subsec. (k), substituted “Public Health: Health Care Facility endorsement” and “to a basic business license under the basic” for “Class A Public Health: Health Care Facility endorsement” and “to a master business license under the master”, respectively.

D.C. Law 15-354, in subsec. (k), validated a previously made technical correction.

D.C. Law 16-33, in subsec. (j), substituted “rules, except those rules that establish or modify license fees as described in subsection (a) of this section, shall be submitted” for “rules shall be submitted”.

D.C. Law 18-145, in subsec. (a)(3), substituted “agency, including standards governing:” for “agency, including (where appropriate), but not limited to, standards governing the following:” and substituted “social, emergency and non-emergency transportation, and other services;” for “social, and other services;”; rewrote subsec. (a)(4); and added subsec. (e-1). Prior to amendment, subsec. (a)(4) read as follows: “(4) A statement of patients/clients/residents’ rights and responsibilities for each type of facility and agency.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(ee)(2) of Streamlining Regulation Emergency Act of

2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see § 5002 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 6-26. — For legislative history of D.C. Law 6-26, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 6-215. — For legislative history of D.C. Law 6-215, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 9-122. — Law 9-122 was introduced in Council and assigned Bill No. 9-417, which was retained by Council. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-196 and transmitted to both Houses of Congress for its review. D.C. Law 9-122 became effective on June 11, 1992.

Legislative history of Law 9-168. — Law 9-168 was introduced in Council and assigned Bill No. 9-418, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 23, 1992, it was assigned Act No. 9-266 and transmitted to both Houses of Congress for its review. D.C. Law 9-168 became effective on October 1, 1992.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 44-502.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 44-202.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support

Act of 2005", was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Legislative history of Law 18-145. — Law 18-145, the "Health Care Facilities Improvement Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-481, which was referred to the Committee on Health. The bill was adopted on first and second readings on January 19, 2010, and February 2, 2009, respectively. Returned without signature by the Mayor on March 1, 2010, it was assigned Act No. 18-320 and transmitted to both Houses of Congress for its review. D.C. Law 18-145 became effective on April 29, 2010.

Short title. — Short title of subtitle A of title V of Law 16-33: Section 5001 of D.C. Law 16-33 provided that subtitle A of title V of the act may be cited as the Health Care and Child Development Facilities Licensure Fees Amendment Act of 2005.

Delegation of Authority. — Delegation of authority under Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, see Mayor's Order 84-105, June 19, 1984.

Delegation of authority pursuant to Law 6-26, see Mayor's Order 86-46, March 20, 1986.

Delegation of authority pursuant to Law 6-215, see Mayor's Order 87-146, June 19, 1987.

Delegation of authority under Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, see Mayor's Order 84-105, June 19, 1984.

Delegation of authority pursuant to Law 6-26, see Mayor's Order 86-46, March 20, 1986.

Delegation of authority pursuant to Law 6-215, see Mayor's Order 87-146, June 19, 1987.

Resolutions. — Resolution 15-593, the "Adult Trauma Facilities Regulations Emergency Approval Resolution of 2004", was approved effective June 29, 2004.

Resolution 15-595, the "Pediatric Trauma Facilities Regulations Emergency Approval Resolution of 2004", was approved effective June 29, 2004.

Resolution 15-812, the "Nursing Facility Proposed Rulemaking Amendment Emergency Approval Resolution of 2004", was approved effective December 7, 2004.

Resolution 17-742, the "Hospital Licensing Proposed Rulemaking Emergency Approval Resolution of 2008", was approved effective July 15, 2008.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-238 and the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" at the end of (a)(1), in the introductory language of (a)(2) and in three places in (a)(2)(F), and twice in (g).

CASE NOTES

Contracts.

A contract in which the plaintiff designated the defendant to be residence manager of a mental health group home facility even though the defendant lacked the qualification to occupy that position was void as against public policy for two reasons: (1) the plaintiff violated munic-

ipal regulations by designating the defendant as the residence director; and (2) the manner devised by the plaintiff for the defendant to pay the plaintiff for her interest in the group home jeopardized the welfare of the residents. *Christian v. Brunson*, 126 WLR 469 (Super. Ct. 1998).

§ 44-505. Inspections.

(a) To ensure that each new facility and agency will be in compliance with the provisions of this subchapter, rules adopted pursuant to this subchapter, and all other applicable laws and rules, the Mayor shall conduct an on-site inspection prior to a facility's or agency's initial licensure. Instead of issuing a full-year license to a new facility or agency, the Mayor may issue a provisional license under § 44-506 pending satisfactory completion of additional, follow-up inspections.

(b) After initial licensure the Mayor shall conduct an on-site inspection as a precondition to licensure renewal, except that the Mayor may accept accreditation by a private accrediting body, federal certification for participation in a

health-insurance or medical assistance program, or federal qualification of a health maintenance organization as evidence of, and in lieu of inspecting for, compliance with any or all of the provisions of this subchapter and rules adopted pursuant to this subchapter that incorporate or are substantially similar to applicable standards or conditions of participation established by that body or the federal government. Acceptance of private accreditation by the Mayor shall be contingent on the facility's or agency's:

(1) Notifying the Mayor of all survey and resurvey dates no later than 5 days after it receives notice of these dates;

(2) Permitting authorized government officials to accompany the survey team; and

(3) Submitting to the Mayor a copy of the certificate of accreditation, all survey findings, recommendations, and reports, plans of correction, interim self-survey reports, notices of noncompliance, progress reports on correction of noncompliances, preliminary decisions to deny or limit accreditation, and all other similar documents relevant to the accreditation process, no later than 5 days after their receipt by the facility or agency or submission to the accrediting body.

(c) An authorized government official may enter the premises of a facility or agency during operating hours for the purpose of conducting an announced or unannounced inspection to check for compliance with any provision of this subchapter, rule adopted pursuant to this subchapter, or other provision of District of Columbia law. In conducting an inspection, the official shall make every effort not to disrupt the normal operations of the facility or agency and its staff.

(d)(1) If a facility or agency loses private accreditation or federal certification, it shall give the Mayor written notice of the loss within 5 calendar days. If in such a case accreditation or certification was accepted in lieu of an inspection under subsection (b) of this section, the Mayor shall immediately upon notification:

(A) Convert the facility's or agency's license to a provisional or restricted license under § 44-506 pending satisfactory completion of an inspection conducted by the Mayor; or

(B) Suspend the facility's or agency's license based upon a finding that loss of accreditation or certification was prompted by existing deficiencies that constitute an immediate or serious and continuing danger to the health, safety, or welfare of its patients/clients/residents.

(2) The Mayor may, prior to a hearing, suspend the license of any facility or agency or convert its license to a provisional or restricted license if he or she determines that existing deficiencies constitute an immediate or serious and continuing danger to the health, safety, or welfare of its patients/clients/residents.

(3) Upon the suspension or conversion of a license pursuant to this subsection, the Mayor shall immediately give the facility or agency written notice of the action, including a copy of the order of suspension or conversion, a statement of the grounds for the action, and notification that the facility or agency has 7 days (excluding Saturdays, Sundays, and legal holidays) from the

day written notice is received to request an expedited, preliminary review hearing. If the facility or agency fails to communicate, either orally or in writing, a timely request for a preliminary review hearing, the order of suspension or conversion shall remain in effect until terminated by the Mayor or an unexpedited hearing is held pursuant to procedures adopted under § 44-504. Upon receipt of a timely request for an expedited, preliminary review hearing, the Mayor shall within 72 hours (excluding Saturdays, Sundays, and legal holidays) provide a hearing to review the reasonableness of the suspension or conversion order. At this hearing, the Mayor shall have the burden of establishing a *prima facie* case of immediate or serious and continuing endangerment. The suspension or conversion order shall be either affirmed or vacated at the hearing. In the event an order is affirmed, it shall, unless extended, remain in effect for no longer than 30 calendar days, during which time a final hearing shall be scheduled to consider the appropriateness of revocation or continuing restrictions on licensure. Before expiration of a suspension or conversion order, an extension may be granted for a period not to exceed an additional 30 calendar days upon agreement of all the parties or for good cause shown.

(e) The Mayor shall have the authority, upon a showing of undue hardship and if not inconsistent with other provisions of this chapter or deleterious to the public health and safety, to grant variances with respect to the standards to be established under § 44-504(a)(3) and (h-1). The Mayor shall maintain a public record listing all variances granted under this subsection and containing a complete written explanation of the basis for each variance.

(Feb. 24, 1984, D.C. Law 5-48, § 6, 30 DCR 5778; Sept. 5, 1985, D.C. Law 6-26, § 2(e), (f), 32 DCR 3615; Apr. 29, 2010, D.C. Law 18-145, § 3(b), 57 DCR 1834.)

Section references. — This section is referred to in §§ 44-103.06, 44-104.04, 44-112.01, 44-501, 44-504, and 44-506.

Prior Codifications. — 1981 Ed., § 32-1305.

Effect of amendments. — D.C. Law 18-145, in subsec. (e), substituted “§ 44-504(a)(3) and (h-1)” for “§ 44-504(a)(3)”.

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 5-154. — For legislative history of D.C. Law 5-154, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 6-26. — For legislative history of D.C. Law 6-26, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 18-145. — For Law 18-145, see notes following § 44-504.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-238 and the designation of the preexisting text of Chapter 5 as subchapter I, “subchapter” has been substituted for “act” twice in the first sentence of (a)-(c).

CASE NOTES

Hospital rules and regulations.

Under District of Columbia law, hospital's discharge of registered nurse for recording her subjective observations and opinions on patients' charts despite warnings that such notes were inappropriate did not violate public policy expressed in municipal regulations dealing with health care and community residence fa-

cilities, as such regulations were not enforceable against registered nurses, such regulations did not require registered nurse to record subjective observations and opinions, and registered nurse was never directed to cease making entries in patients' charts altogether, only to stop entering her subjective opinions. D.C.Mun.Reg. title 22, §§ 3002.5, 3228.7,

3235.7(j). *Domen v. National Rehabilitation Hosp.*, 925 F. Supp. 830, 1996 U.S. Dist. LEXIS 6612 (1996).

§ 44-506. Provisional and restricted licenses.

(a) As an alternative to denial, nonrenewal, suspension, or revocation of a license when a facility or agency has numerous deficiencies or a serious single deficiency with respect to the standards to be established under § 44-504(a)(3), the Mayor may:

(1) Issue a provisional license if the facility or agency is taking appropriate ameliorative action in accordance with a mutually agreed upon timetable; or

(2) Issue a restricted license that prohibits the facility or agency from accepting new patients/clients/residents or delivering certain specified services that it would otherwise be authorized to deliver, if appropriate ameliorative action is not forthcoming.

(b) As provided in § 44-505(a), provisional licenses may be issued to new facilities and agencies in order to afford the Mayor sufficient time and evidence to evaluate whether a new facility or agency is capable of complying with the provisions of this subchapter, rules adopted pursuant to this subchapter, and other applicable provisions of law.

(c) Provisional licenses may be granted for a period not exceeding 90 days, and may be renewed no more than once.

(d) Any provisional license issued pursuant to this section shall be issued as a provisional Public Health: Health Care Facility endorsement or a provisional Public Health: Human Services facility endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(e) If a facility is issued a restricted or provisional license, the Department of Health may, if appropriate, appoint a temporary manager or monitor in accordance with a mutually agreed upon timetable or until the facility becomes compliant with § 44-504(a)(3) and (h-1).

(Feb. 24, 1984, D.C. Law 5-48, § 7, 30 DCR 5778; Apr. 20, 1999, D.C. Law 12-261, § 2003(aa)(3), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(ee)(3), 50 DCR 6913; Apr. 29, 2010, D.C. Law 18-145, § 3(c), 57 DCR 1834.)

Section references. — This section is referred to in § 44-505.

Prior Codifications. — 1981 Ed., § 32-1306.

Effect of amendments. — D.C. Law 15-38, in subsec. (d), substituted “Public Health: Health Care Facility endorsement or a provisional Public Health: Human Services Facility endorsement to a basic business license under the basic” for “Class A Public Health: Health Care Facility endorsement or a provisional Public Health: Human Services facility endorsement to a master business license under the master”.

D.C. Law 18-145 added subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(ee)(3) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 44-502.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 44-202.

Legislative history of Law 18-145. — For Law 18-145, see notes following § 44-504.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-238 and the designation of the preexisting text as subchapter I, “subchapter” has been substituted for “act” twice near the end of (b).

§ 44-507. Standards for clinical privileges and staff membership; anticompetitive practices prohibited.

(a) The accordence and delineation of clinical privileges shall be determined on an individual basis and commensurate with an applicant's education, training, experience, and demonstrated current competence. In implementing these criteria, each facility and agency shall formulate and apply reasonable, nondiscriminatory standards for the evaluation of an applicant's credentials. As part of its overall responsibility for the operation of a facility or agency, the governing body, or designated persons so functioning, shall ensure that decisions on clinical privileges and staff membership are based on an objective evaluation of an applicant's credentials, free of anticompetitive intent or purpose. Whenever possible, the credentials committee and other staff who evaluate and determine the qualifications of applicants for clinical privileges and staff membership shall include members of the applicant's profession. The credentials committee shall accept the District of Columbia's uniform credentialing form as the sole application for a healthcare provider to become credentialed or recredentialed.

(b)(1) The following are not valid factors for consideration in the determination of qualifications for staff membership or clinical privileges:

(A) An applicant's membership or lack of membership in a professional society or association;

(B) An applicant's decision to advertise, lower fees, or engage in other competitive acts intended to solicit business;

(C) An applicant's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services on other than a fee-for-service basis;

(D) An applicant's support for, training of, or participation in a private group practice with members of a particular class of health professional;

(E) An applicant's practices with respect to testifying in malpractice suits, disciplinary actions, or any other type of proceeding; and

(F) An applicant's willingness to send a certain amount of patients/clients who are in need of the services of a facility or agency to a particular facility or agency; provided, that this last restriction shall not apply to public facilities and agencies.

(2) Each facility or agency shall formulate procedures to ensure that the foregoing factors play no part when decisions regarding clinical privileges and staff membership are made. In any action brought by an individual against a facility or agency regarding a determination of clinical privileges or staff membership, the facility or agency shall have the burden of proving that none of these considerations were a factor in the determination.

(c) No provision of District of Columbia law, institutional or staff bylaw of a facility or agency, rule or regulation, or practice shall prohibit qualified advanced practice registered nurses, podiatrists, or psychologists from being

accorded clinical privileges and appointed to all categories of staff membership at those facilities and agencies that offer the kinds of services that can be performed by either members of these health professions or physicians.

(d) General and family practitioners who have demonstrated a current competence in the performance of particular services or procedures shall not be discriminated against with respect to staff membership or the accordance and delineation of clinical privileges on account of their type of practice.

(e) If a facility or agency offers the types of services that can be performed by physician assistants or other, analogous health professional assistants, it shall establish clearly defined and objective procedures for the processing and evaluation of requests by members of these groups to provide such services at the facility or agency.

(f) Whenever a health professional submits a completed application for staff membership or clinical privileges to a facility or agency, that facility or agency shall have 120 calendar days to grant or deny the application. No facility or agency may deny such an application, terminate, or reduce the rights and responsibilities attending the staff membership of a health professional, or reduce, suspend, revoke, or refuse to renew his or her clinical privileges, without providing him or her with the following minimum procedural protections:

(1) A contemporaneous written explanation containing the explicit reasons for taking the action;

(2) Reasonable advance notice of the right to a fair hearing which would afford the applicant an opportunity to adequately prepare a rebuttal to the stated reasons for the action;

(3) A fair hearing, including the right to present evidence and call witnesses in his or her behalf;

(4) The right to have retained counsel present at the hearing if the facility or agency is represented by counsel at the hearing;

(5) A written decision containing the explicit reasons for taking the action and substantially based on the evidence produced at the hearing; and

(6) Access to a complete record documenting all preliminary and final decisions and proceedings related to the decisions.

(Feb. 24, 1984, D.C. Law 5-48, § 8, 30 DCR 5778; Mar. 14, 1985, D.C. Law 5-159, § 6, 32 DCR 30; Dec. 3, 1985, D.C. Law 6-66, § 11, 32 DCR 6086; Mar. 23, 1995, D.C. Law 10-247, § 5, 42 DCR 457; Apr. 13, 2002, D.C. Law 14-96, § 201, 49 DCR 991; Mar. 2, 2007, D.C. Law 16-191, § 68(a), 53 DCR 6794.)

Cross references. — Health occupations, collaboration, see §§ 3-1206.03 and 44-504.

Section references. — This section is referred to in § 44-504.

Prior Codifications. — 1981 Ed., § 32-1307.

Effect of amendments. — D.C. Law 14-96, in subsec. (a), at the end, added "The credentials committee shall accept the District of Columbia's uniform credentialing form as the sole application for a healthcare provider to become credentialed or recertified."

D.C. Law 16-191, in subsec. (b), designated the lead-in language as par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), and designated par. (2).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 6-66. — Law 6-66 was introduced in Council and assigned Bill No. 6-135, which was referred to the Committee on Education and reassigned to the Committee on Human Services. The Bill was

adopted on first and second readings on September 10, 1985, and September 24, 1985, respectively. Signed by the Mayor on October 9, 1985, it was assigned Act No. 6-89 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-247. — Law 10-247, the “Health Occupations Revision Act of 1985 Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-598, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 1, 1994, respectively.

Legislative history of Law 14-96. — Law

14-96, the “Health Insurers and Credentialing Intermediaries Uniform Credentialing Form Act of 2002”, was introduced in Council and assigned Bill No. 14-54, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on January 28, 2002, it was assigned Act No. 14-229 and transmitted to both Houses of Congress for its review. D.C. Law 14-96 became effective on April 13, 2002.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

CASE NOTES

ANALYSIS

Applications.

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Applications.

Surgeon who did not submit fully completed application for staff privileges to hospital could not recover under District of Columbia statute which requires hospitals to grant or deny completed application for staff privileges within 120 calendar days in action brought after his provisional staff privileges were suspended and then revoked, even assuming that statute gives rise to action for damages. D.C. Code 1981, § 32-1307(f). *Canady v. Providence Hosp.*, 942 F. Supp. 11, 1996 U.S. Dist. LEXIS 15194 (1996), affirmed without opinion by 132 F.3d 1480, 328 U.S. App. D.C. 134, 1997 U.S. App. LEXIS 40251 (1997).

Civil rights actions.

Hospital officials' alleged discrimination against staff physician on basis of race in their imposition of monitoring and supervision agreement arguably gave rise to private causes of action under Title VII, statute guaranteeing equal rights under the law, civil rights conspiracy statute, and civil rights provisions of the District of Columbia Code. 42 U.S.C. §§ 1981, 1985; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, § 1-2512. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Alleged failure of hospital to act on black physician's reappointment to medical staff ar-

guably caused physician to suffer injury cognizable under civil rights laws if racial animus animated that refusal. 42 U.S.C. §§ 1981, 1985; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, § 1-2512. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Black physician who brought civil rights action challenging hospital's requirement that he enter into monitoring and supervision agreement in order to retain his staff privileges was not required to exhaust hospital's internal termination process before bringing civil rights action. 42 U.S.C. §§ 1981, 1985; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, § 1-2512. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Fact issue as to whether black physician voluntarily signed monitoring and supervision agreement precluded dismissal of civil rights claims based on agreement; although physician actually signed agreement, language of letter from hospital showed that he signed it to avoid termination of his hospital privileges. 42 U.S.C. §§ 1981, 1985; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, § 1-2512. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Construction and application.

Under either District of Columbia or Maryland law, District of Columbia statute which prescribed procedures for evaluating qualifications of health care professionals for staff positions and clinical privileges was inappropriate policy basis for claim of discharged professional corporation employee, who worked as vascular surgeon, that he was wrongfully discharged in violation of public policy, since law in question did not apply to private medical groups like corporation. *Lurie v. Mid-Atlantic Permanente*

Med. Group, P.C., 729 F.Supp.2d 304, 2010 U.S. Dist. LEXIS 80078 (2010).

Expiration of physician's monitoring and supervision agreement with hospital did not trigger District of Columbia statute setting forth standards for clinical privileges and staff membership and prohibiting anticompetitive practices; when physician's agreement expired, physician returned to full and unencumbered membership and privilege status. D.C. Code 1981, § 32-1307(f). *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140, 1995 U.S. Dist. LEXIS 15475 (1995), vacated by 1996 U.S. Dist. LEXIS 9532, 1996-2 Trade Cas. (CCH) P71511 (D.D.C. June 24, 1996).

Due process of law.

Private hospital's suspension of surgeon's staff privileges did not constitute "state action," as required for surgeon to prevail on due process claim under Fourteenth Amendment, even though hospital accepted federal funds under Hill-Burton Act; surgeon demonstrated no nexus between requirements of Hill-Burton Act and challenged actions. U.S. Const. Amend. 14; Public Health Service Act, § 600 et seq., as amended, 42 U.S.C. § 291 et seq. *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140, 1995 U.S. Dist. LEXIS 15475 (1995), vacated by 1996 U.S. Dist. LEXIS 9532, 1996-2 Trade Cas. (CCH) P71511 (D.D.C. June 24, 1996).

Exhaustion of administrative remedies.

Failure of surgeon to exhaust hospital's administrative process before filing suit in connection with suspension of his staff privileges at hospital warranted dismissal for failure to exhaust administrative remedies. *Canady v. Providence Hosp.*, 903 F. Supp. 125, 1995 U.S. Dist. LEXIS 16247 (1995).

Doctor, who brought suit against hospital after being denied staff privileges, did not fail to exhaust administrative remedies and did not waive his right to object to defective report by failing to consent to the reconvening of ad hoc fact-finding committee for proper factual findings and statement of records, as hospital's medical executive committee could and should have simply returned the fundamentally defective report to ad hoc fact-finding committee to prepare it properly. *Balkissoon v. Capitol Hill Hosp.*, 558 A.2d 304, 1989 D.C. App. LEXIS 71 (1989).

Hospital charter and bylaws.

The bylaws of a private hospital delineating procedures to be followed in determining whether doctors receive staff privileges creates a right independent of any contractual right to have the hospital comply with such bylaws, as public has substantial interest in operation of hospitals, public or private, and both doctors and patients can suffer if otherwise qualified

doctors are wrongly denied staff privileges. *Balkissoon v. Capitol Hill Hosp.*, 558 A.2d 304, 1989 D.C. App. LEXIS 71 (1989).

Restraint of trade and anti-trust actions.

Prudential considerations did not require district court to defer consideration of physician's antitrust claims against hospital that did not depend on termination of physician's staff privileges; although hearings on termination of staff privileges had not been completed at hospital, alleged conspiracy to exclude physician from membership in health maintenance organization and to interfere with his appointment to staff at another hospital had already taken place. *Sherman Anti-Trust Act*, § 2, 15 U.S.C. § 2; *Clayton Act*, § 4, 15 U.S.C. § 15. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Physician's allegations that hospital officials conspired to preclude his membership in health maintenance organization and preferred provider organization, and interfered with this application for reemployment to staff at another hospital, sufficiently alleged antitrust injury to qualify for damages under the *Clayton Act*. *Sherman Anti-Trust Act*, § 2, 15 U.S.C. § 2; *Clayton Act*, § 4, 15 U.S.C. § 15. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Physician's hospital staff membership and privileges did not expire by operation of law when hospital failed to grant or deny his application for reappointment to medical staff within 120 day period prescribed by District of Columbia statute following termination of monitoring and supervision agreement, so as to render his antitrust claims ripe for review; nowhere did statute indicate or suggest that staff membership or clinical privileges automatically terminated following expiration of 120 day period. *Sherman Act*, §§ 1, 2, 15 U.S.C. §§ 1, 2; D.C. Code 1981, § 32-1307(f). *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140, 1995 U.S. Dist. LEXIS 15475 (1995), vacated by 1996 U.S. Dist. LEXIS 9532, 1996-2 Trade Cas. (CCH) P71511 (D.D.C. June 24, 1996).

Surgeon challenging summary suspension of his staff privileges at hospital failed to allege concerted action between at least two legally distinct persons or entities, as required to state claim under *Sherman Act*; members of medical staff served as hospital's agents when credentializing other physicians and, as such, they were legally indistinct from hospital. *Sherman Act*, § 1, 15 U.S.C. § 1. *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140, 1995 U.S. Dist. LEXIS 15475 (1995), vacated by 1996 U.S. Dist. LEXIS 9532, 1996-2

Trade Cas. (CCH) P71511 (D.D.C. June 24, 1996).

Surgeon challenging summary suspension of his staff privileges at hospital failed to plead facts sufficient to establish existence of anti-trust conspiracy or antitrust injury, i.e., existence of substantially adverse restraint on competition in relevant market and, thus, surgeon failed to state claim under Sherman Act. Sherman Act, § 1, 15 U.S.C. § 1. *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140, 1995 U.S. Dist. LEXIS 15475 (1995), vacated by 1996 U.S. Dist. LEXIS 9532, 1996-2 Trade Cas. (CCH) P71511 (D.D.C. June 24, 1996).

Review.

District court's dismissal, on ripeness grounds, of physician's action against hospital based on proceedings at hospital to terminate his staff privileges, would not be affirmed or rejected on appeal, where ripeness obstacle was created by physician's continuing practice at hospital while under supervision, and it was possible that physician's privileges had terminated during pendency of appeal; accordingly, case would be remanded to district court for additional fact-finding on whether physician's staff membership and privileges of hospital had been terminated. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

RICO remedies.

Surgeon's complaint challenging summary suspension of his staff privileges at hospital failed to state claim under civil Racketeer Influenced and Corrupt Organizations Act (RICO); surgeon failed to allege violation of any of predicate acts set forth in RICO and, thus, could not establish "racketeering activity" under statute, nor had surgeon alleged at least two predicate acts of racketeering activity that

were related and posed threat of continued criminal activity, as required to plead requisite "pattern" of racketeering activity. 18 U.S.C. § 1961(1, 5). *Johnson v. Greater Southeast Community Hosp. Corp.*, 903 F. Supp. 140, 1995 U.S. Dist. LEXIS 15475 (1995), vacated by 1996 U.S. Dist. LEXIS 9532, 1996-2 Trade Cas. (CCH) P71511 (D.D.C. June 24, 1996).

Sealing of records.

District court could not seal record in physician's action against hospital challenging termination of his staff privileges based on hospital's general interest in keeping peer review process out of public eye; rather, in determining whether sealing order was appropriate, district court, on remand, was required to articulate precise reasons why, especially in view of physician's desire for disclosure and public interest in being informed about quality of health care. *Johnson v. Greater Southeast Community Hosp. Corp.*, 951 F.2d 1268, 1991 U.S. App. LEXIS 28952 (C.A.D.C. 1991).

Violation of law.

Surgeon whose provisional staff privileges at hospital had been suspended and then revoked failed to establish violation by hospital and its officials of District of Columbia statute which provides that physician's willingness to send certain number of patients to particular hospital is not valid factor for consideration in determination of that physician's qualifications for staff membership or clinical privileges; while surgeon showed that hospital was upset following his transfer of patients to other hospitals, no connection was shown between economic aspects of those decisions and hospital's decisions with respect to privileges. D.C. Code 1981, § 32-1307(b)(6). *Canady v. Providence Hosp.*, 942 F. Supp. 11, 1996 U.S. Dist. LEXIS 15194 (1996), affirmed without opinion by 132 F.3d 1480, 328 U.S. App. D.C. 134, 1997 U.S. App. LEXIS 40251 (1997).

§ 44-508. Reporting to licensing authority.

(a) Except as provided in subsection (b) of this section, in the event that a health professional's: (1) clinical privileges are reduced, suspended, revoked, or not renewed; or (2) employment or staff membership is involuntarily terminated or restricted for reasons of, or voluntarily terminated or restricted while involuntary action is being contemplated for reasons of, professional incompetence, mental or physical impairment, or unprofessional or unethical conduct, a facility or agency shall submit a written report detailing the facts of the case to the duly constituted governmental board, commission, or other authority, if one exists, responsible for licensing that health professional.

(b) The reporting requirement in subsection (a) of this section shall not apply to a temporary suspension or relinquishment of privileges or responsibilities if a health professional enters and successfully completes a prescribed program of education or rehabilitation. As soon as there exists no reasonable

expectation that he or she will enter and successfully complete such a prescribed program, the facility or agency shall submit a report forthwith pursuant to subsection (a) of this section.

(Feb. 24, 1984, D.C. Law 5-48, § 9, 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-1308. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 5-48. — For

§ 44-509. Penalties; enforcement.

(a) Any person who intentionally impedes a District of Columbia official or employee in the performance of his or her authorized duties under this subchapter, or any rule issued pursuant to this subchapter, shall be subject to a fine not exceeding \$1,000 per day of violation, imprisonment for not more than 90 days, or both. Prosecution shall be in the Superior Court of the District of Columbia by information signed by the Attorney General for the District of Columbia or one of his or her assistants.

(b) Notwithstanding the availability of any other remedy, the Attorney General for the District of Columbia or one of his or her assistants may maintain, in the name of the District of Columbia, an action in the Superior Court of the District of Columbia to enjoin any person, agency, corporation, or other entity from operating a facility or agency in violation of the terms of its license, provisions of this subchapter, or any rule issued pursuant to this subchapter.

(c) Notwithstanding the availability of any other remedy, an individual who is aggrieved by a violation of any provision of this subchapter or rule issued pursuant to this subchapter may maintain an action in the Superior Court of the District of Columbia to enjoin the continuation of that violation or the commission of any future violation.

(d)(1) Any person who knowingly gives an owner, licensee, administrator, or employee of a facility or agency, whether directly or indirectly, advance notice of an officially unannounced inspection or investigation to be conducted by the Mayor, the Long-Term Care Ombudsman designated pursuant to 42 U.S.C. § 3027(a)(12), or their designees, shall be:

(A) Guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000, imprisonment for not more than 90 days, or both; and

(B) If a District government employee, subject to disciplinary and other remedial action in accordance with District law.

(2) Prosecution under paragraph (1)(A) of this subsection shall be in the Superior Court of the District of Columbia by information signed by the Attorney General for the District of Columbia or one of his or her assistants.

(e)(1) Civil fines, penalties, and related costs may be imposed against a facility or agency, whether public or private, for the violation of any provision of this subchapter, rule issued pursuant to this subchapter (including residents' rights established pursuant to § 44-504(a)(4)), or other District of Columbia or locally enforceable federal law. Except as provided in paragraphs (2) through (5) of this subsection and subsection (f)(1) of this section, proce-

dures for adjudication and enforcement and applicable fines, penalties, and costs shall be those established by or pursuant to Chapter 18 of Title 2. Governmental immunity shall not be a defense to any civil fine, penalty, or cost imposed.

(2) Whenever the respondent in proceedings for a civil fine or penalty is the licensee or administrator of a nursing home or community residence facility, the Long-Term Care Ombudsman shall have the right to intervene as a party in any hearing, administrative appeal, or court review that is a part of those proceedings. As a party to the proceedings, the Long-Term Care Ombudsman shall be served with a copy of the notice of infraction, all hearing notices, all orders of the Administrative Law Judge, any notices of appeal, and any orders of a court.

(3) Civil fines, penalties, and related costs imposed against a nursing home or community residence facility shall not come out of the funds needed to provide quality care and services to residents. To monitor compliance with this paragraph, the Mayor shall conduct an audit at least annually of every nursing home and community residence facility against which civil fines, penalties, or costs have been imposed. Civil fines, penalties, and costs imposed against any nursing home or community residence facility owned by the District of Columbia shall be paid into either the special fund or account if established pursuant to § 44-1002.09, or a special account to be used for the personal needs of residents.

(4) Notwithstanding the availability of other means of enforcement, the Mayor may directly deduct the amount of civil fines, penalties, and related costs imposed against any facility or agency from amounts otherwise payable by the District of Columbia to the licensee or administrator of that facility or agency.

(5) Any person who violates any provision of this subchapter, or any rules or regulations promulgated pursuant to this subchapter, for which a civil fine has not been established pursuant to § 2-1801.04, shall be subject to a civil fine in an amount not to exceed that established for the closest existing analogous violation.

(f)(1) Any person who commits a violation of any provision of this subchapter, or any rules or regulations promulgated pursuant to this subchapter, that results in demonstrable harm to a patient, resident, or client of a facility or agency, shall be subject to a fine for each offense not to exceed \$10,000. For each violation, each day of violation shall constitute a separate offense, and the penalties prescribed shall apply to each separate offense. The total fine for a series of related offenses shall not exceed \$100,000. Procedures for adjudication of violations under this subsection shall be those established pursuant to Chapter 18 of Title 2.

(2) Except as provided in subsections (a) and (d) of this section, any person who knowingly violates this subchapter, or any rules or regulations promulgated pursuant to this subchapter, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$25,000, or imprisoned for not more than 180 days, or both. For each violation, each day of violation shall constitute a separate offense, and the penalties prescribed shall apply to each separate

offense. Prosecutions for violation of this subchapter pursuant to this subsection shall be brought in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia.

(Feb. 24, 1984, D.C. Law 5-48, § 10, 30 DCR 5778; Apr. 18, 1986, D.C. Law 6-108, § 502, 33 DCR 1510; Feb. 28, 1987, D.C. Law 6-215, § 2(d), 34 DCR 893; June 25, 2002, D.C. Law 14-155, § 2, 49 DCR 4269; Apr. 13, 2005, D.C. Law 15-354, § 65, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 68(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 32-1309.

Effect of amendments. — D.C. Law 14-155 rewrote subsec. (a); in subsec. (e)(1), substituted “Except as provided in paragraphs (2) through (5) of this subsection and subsection (f)(1) of this section,” for “Except as provided in paragraphs (2) through (4) of this subsection,”; and added subsecs. (e)(5) and (f). Prior to amendment, subsec. (a) read as follows:

D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”; and, in subsec. (e)(2), substituted “Administrative Law Judge” for “hearing examiner” and “any orders” for “any orders of the District of Columbia Board of Appeals and Review or”.

D.C. Law 16-191, in subsec. (f)(2), validated a previously made technical correction.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Health Care and Community Residence Facility, Hospice and Home Care Licensure Penalties Temporary Amendment Act of 2000 (D.C. Law 13-271, April 4, 2001, law notification 48 DCR 3605).

For temporary (225 day) amendment of section, see § 2 of Health Care and Community Residence Facility, Hospice and Home Care Licensure Penalties Temporary Amendment Act of 2001 (D.C. Law 14-85, March 19, 2002, law notification 49 DCR 2990).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Health Care and Community Residence Facility Hospice and Home Care Licensure Penalties Emergency Amendment Act of 2000 (D.C. Act 13-546, January 11, 2001, 48 DCR 770).

For temporary (90 day) amendment of section, see § 2 of Health Care and Community Residence Facility, Hospice and Home Care Licensure Penalties Emergency Amendment Act of 2001 (D.C. Act 14-175, November 19, 2001, 48 DCR 11053).

For temporary (90 day) amendment of section, see § 2 of Health Care and Community Residence Facility, Hospice and Home Care Licensure Penalties Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-294, February 25, 2002, 49 DCR 2532).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 6-108. — Law 6-108 was introduced in Council and assigned Bill No. 6-256, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 28, 1986, and February 11, 1986, respectively. Signed by the Mayor on February 24, 1986, it was assigned Act No. 6-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-215. — For legislative history of D.C. Law 6-215, see Historical and Statutory Notes following § 44-501.

Legislative history of Law 14-155. — Law 14-155, the “Health Care and Community Residence Facility, Hospice and Home Care Licensure Penalties Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-392, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 24, 2002, it was assigned Act No. 14-334 and transmitted to both Houses of Congress for its review. D.C. Law 14-155 became effective on June 25, 2002.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

Editor’s notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-238 and the designation of the preexisting text as subchapter I, “subchapter” has been substituted for “act” twice in the first sentence of (a), twice in (e)(5), and five times in (f) and for “chapter” twice near the end of (b), in (c) and twice in (e)(1).

CASE NOTES

Contracts.

A contract in which the plaintiff designated the defendant to be residence manager of a mental health group home facility even though the defendant lacked the qualification to occupy that position was void as against public policy for two reasons: (1) the plaintiff violated munic-

ipal regulations by designating the defendant as the residence director; and (2) the manner devised by the plaintiff for the defendant to pay the plaintiff for her interest in the group home jeopardized the welfare of the residents. *Christian v. Brunson*, 126 WLR 469 (Super. Ct. 1998).

Subchapter II. Unlicensed Personnel Criminal Background Check.

§ 44-551. Definitions.

For purposes of this subchapter, the term:

(1A) "Contract worker" means a compensated contractor for whom it is foreseeable he or she will come in direct contact with patients.

(1B) "Criminal background check" means an investigation into a person's criminal history to determine whether, within the 7 years preceding the background check, the person has been convicted in the District of Columbia, or in any other state or territory of the United States where such person has worked or resided, of any of the offenses enumerated in § 44-552(e) or their equivalent in another state or territory.

(1C) "Facility" means any entity required to be licensed pursuant to subchapter I of this chapter or Chapter 1 of this title and any entity furnishing Medicaid services under a provider agreement with the District of Columbia in accordance with regulations promulgated under title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; 42 U.S.C. § 1396 et seq.).

(2) Repealed.

(3) "Medicaid services" means nursing facility services, home health-care services, inpatient hospital services and nursing facilities for individuals 65 years of age or older in an institution for mental disease, mental health rehabilitation services in an intermediate care facility for persons with mental retardation home and community care for elderly individuals with functional disabilities, and community supported living arrangement services as defined in title XIX of the Social Security Act, approved July 30, 1965 (Pub. L. 89-97; 42 U.S.C. § 1396 et seq.).

(4) "Nurse Aide Abuse Registry" means a record, maintained by the District of Columbia in accordance with section 4211 of the Omnibus Budget Reconciliation Act of 1987, approved December 22, 1987 (101 Stat. 1330-182; 42 U.S.C. § 1396r), and 29 DCMR § 3250-3254, containing names of individuals who worked as nurse aides and were determined to have abused or neglected, or misappropriated the property of, a nursing home resident.

(5) "Person" means an individual.

(6) "Private agency" means an entity or person that offers customer assistance in the use of criminal background checks for employment purposes.

(7) "Unlicensed person" means a person not licensed pursuant to Chapter 12 of Title 3, who functions in a complementary or assistance role to licensed

health care professionals in providing direct patient care or in performing common nursing tasks. The term "unlicensed person" includes nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. The term "unlicensed person" also includes housekeeping, maintenance, and administrative staff for whom it is foreseeable that the prospective employee or contract worker will come in direct contact with patients.

(Apr. 20, 1999, D.C. Law 12-238, § 2, 46 DCR 881; Apr. 12, 2000, D.C. Law 13-91, § 148(a), 47 DCR 520; June 24, 2000, D.C. Law 13-127, § 1403, 47 DCR 2647; Dec. 18, 2001, D.C. Law 14-56, § 116(k), 48 DCR 7674; Apr. 13, 2002, D.C. Law 14-98, § 2(a), 49 DCR 997; Apr. 24, 2007, D.C. Law 16-305, § 70, 53 DCR 6198; Mar. 25, 2009, D.C. Law 17-353, §§ 200, 201, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 32-1351.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (2).

D.C. Law 13-127 in subsec. (1) provided for adding the phrase "or Chapter 1 of this title," before the phrase "and any entity".

D.C. Law 14-56, in par. (3), inserted "mental health rehabilitation" before "services in an intermediate care facility for the mentally retarded,".

D.C. Law 14-98 redesignated par. (1) as par. (1C); added pars. (1A), (1B), (4), (5), (6), and (7); and repealed par. (2) which had read as follows: "(2) 'Licensed professional' means a person employed by a facility who is licensed by a professional board or commission. 'Licensed professional' does not include a person who functions in a complementary or assistant role to licensed nurses in providing direct patient care or carrying out common nursing tasks, such as a nurses aide, orderly, assistant technician, attendant, home-health aide, medication aide, geriatric aide, or other health aide; housekeeping staff; maintenance staff; administrative staff, and compensated contractors."

D.C. Law 16-305, in par. (3), substituted "elderly individuals with disabilities" for "disabled elderly individuals".

D.C. Law 17-353 validated previously made technical corrections in par. (3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(a) of TANF-related Medicaid Managed Care Temporary Amendment Act of 1999 (D.C. Law 12-277, April 27, 1999, law notification 46 DCR 4283).

For temporary (225 day) amendment of section, see § 2(a) of Health-Care Facility Unlicensed Personnel Criminal Background Check Temporary Amendment Act of 2001 (D.C. Law 14-40, October 13, 2001, law notification 48 DCR 9913).

For temporary (225 day) amendment of section, see § 16(k) of Department of Mental

Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, November 3, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary amendment of section, see § 3(a) of the TANF-related Medicaid Managed Care Program Technical Clarification Emergency Amendment Act of 1998 (D.C. Act 12-605, January 20, 1999, 46 DCR 1287).

For temporary (90-day) amendment of section, see § 2(a) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Technical Amendments Emergency Act of 1999 (D.C. Act 13-201, December 1, 1999, 46 DCR 10452).

For temporary (90-day) amendment of section, see § 2(a) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Technical Amendments Congressional Review Emergency Act of 2000 (D.C. Act 13-294, March 7, 2000, 47 DCR 2515).

For temporary (90 day) amendment of section, see § 16(k) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(k) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Facility Unlicensed Personnel Criminal Background Check Emergency Amendment Act of 2001 (D.C. Act 14-102, July 23, 2001, 48 DCR 7143).

For temporary (90 day) amendment of section, see § 116(k) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Facility Unlicensed Personnel Criminal Background Check Congressional Review Emergency Amendment

Act of 2001 (D.C. Act 14-160, November 2, 2001, 48 DCR 10395).

Legislative history of Law 12-238. — Law 12-238, the “Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998,” was introduced in Council and assigned Bill No. 12-628, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 22, 1998, it was assigned Act No. 12-567 and transmitted to both Houses of Congress for its review. D.C. Law 12-238 became effective on April 20, 1999.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-127. — Law 13-127, the “Assisted Living Residence Regula-

tory Act of 2000,” was introduced in Council and assigned Bill No. 13-107, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 4, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-297 and transmitted to both Houses of Congress for its review. D.C. Law 13-127 became effective on June 24, 2000.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 44-401.

Legislative history of Law 14-98. — Law 14-98, the “Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002,” was introduced in Council and assigned Bill No. 14-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on January 28, 2002, it was assigned Act No. 14-231 and transmitted to both Houses of Congress for its review. D.C. Law 14-98 became effective on April 13, 2002.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 44-102.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 44-422.

§ 44-552. Criminal background checks.

(a) The requirements of this section shall not apply to persons employed on or before July 23, 2001, persons licensed under Chapter 12 of Title 3, or to a person who volunteers services to a facility and works under the direct supervision of a person licensed pursuant to Chapter 12 of Title 3.

(b) No facility shall employ or contract with any unlicensed person until a criminal background check has been conducted for that person. Each facility shall inform each prospective employee or contract worker that the facility is required to conduct a criminal background check before employing or contracting with an unlicensed person.

(c) All criminal records received by a facility for the purposes of employing a person who is not a licensed professional pursuant to this subchapter shall be kept confidential and shall be used solely by the facility. The criminal records shall not be released or otherwise disclosed to any person except to:

(1) The Mayor or the Mayor’s designee during an official inspection or investigation of the facility;

(2) The person whose background is being investigated;

(3) Comply with an order of a court; or

(4) Any person with the written consent of the person being investigated.

(d) All criminal records received by a facility shall be destroyed after one year from the end of employment of the person to whom the records relate.

(e) No facility shall employ or contract with any unlicensed person if, within the 7 years preceding a criminal background check conducted pursuant to this section, that person has been convicted in the District of Columbia, or in any other state or territory of the United States where such person has worked or

resided, of any of the following offenses or their equivalent in another state or territory:

- (1) Murder, attempted murder, or manslaughter;
- (2) Arson;
- (3) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm;
- (4) Burglary;
- (5) Robbery;
- (6) Kidnapping;
- (7) Theft, fraud, forgery, extortion or blackmail;
- (8) Illegal use or possession of a firearm;
- (9) Repealed.
- (10) Rape, sexual assault, sexual battery, or sexual abuse;
- (11) Child abuse or cruelty to children; or
- (12) Unlawful distribution or possession with intent to distribute, a controlled substance.

(f) Repealed.

(g) No facility shall employ or contract with any unlicensed person who is not a licensed professional if that person's name appears on the Nurse Aide Abuse Registry maintained pursuant to regulations promulgated by the Mayor.

(h) Each facility may obtain a criminal background check from the Metropolitan Police Department, the U.S. Department of Justice, or from a private agency. The facility shall pay the fee that is established and charged by the entity that provides the criminal background check results. Nothing in this subsection shall preclude the facility from seeking reimbursement of the fee paid for the criminal background check from the applicant for employment or contract work.

(i) Except as provided in subsection (a) of this section, a facility may also opt to conduct a criminal background check on any employee or volunteer who provides services at the facility.

(Apr. 20, 1999, D.C. Law 12-238, § 3, 46 DCR 881; Apr. 12, 2000, D.C. Law 13-91, § 148(b), 47 DCR 520; Apr. 13, 2002, D.C. Law 14-98, § 2(b), 49 DCR 997.)

Prior Codifications. — 1981 Ed., § 32-1352.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment in subsec. (b).

D.C. Law 14-98, in subsec. (a), substituted "apply to persons employed on or before July 23, 2001, persons licensed" for "apply to persons licensed"; in subsec. (e)(12), substituted "distribution or possession with intent" for "distribution, possession, or possession with intent"; rewrote subsecs. (b), (e) (introductory matter), and (h); repealed subsecs. (e)(9) and (f); in subsec. (g), substituted "No facility shall employ or contract with any unlicensed person" for "Except as provided in subsection (f) of this

section, no facility shall employ or contract with any person who is not a licensed professional".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Health-Care Facility Unlicensed Personnel Criminal Background Check Temporary Amendment Act of 2001 (D.C. Law 14-40, October 13, 2001, law notification 48 DCR 9913).

Emergency legislation. — For temporary amendment of section, see § 3(b) of the TANF-related Medicaid Managed Care Program Technical Clarification Emergency Amendment Act of 1998 (D.C. Act 12-605, January 20, 1999, 46 DCR 1287).

For temporary (90-day) amendment of sec-

tion, see § 2(b) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Technical Amendments Emergency Act of 1999 (D.C. Act 13-201, December 1, 1999, 46 DCR 10452).

For temporary (90-day) amendment of section, see § 2(b) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Technical Amendments Congressional Review Emergency Act of 2000 (D.C. Act 13-294, March 7, 2000, 47 DCR 2515).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Facility Unlicensed Personnel Criminal Background Check Emergency Amendment Act of 2001 (D.C. Act 14-102, July 23, 2001, 48 DCR 7143).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Facility Unlicensed Personnel Criminal Background Check

Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-160, November 2, 2001, 48 DCR 10395).

Legislative history of Law 12-238. — For legislative history of D.C. Law 12-238, see Historical and Statutory Notes following § 44-551.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 44-551.

Legislative history of Law 14-40. — For Law 14-40, see notes following § 44-551.

Legislative history of Law 14-98. — For Law 14-98, see notes following § 44-551.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 12-238, the "Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998", see Mayor's Order 2000-9, January 21, 2000 (47 DCR 1020).

§ 44-553. Penalties for unauthorized released of criminal information.

(a) Any person releasing or disclosing any information in violation of § 44-552(c) shall be guilty of a misdemeanor, and shall be punishable by the payment of a fine not greater than \$300, a term of imprisonment not greater than 30 days, or both.

(b) Civil fines, penalties, and fees may be imposed as sanctions for any violation of this subchapter or the rules issued pursuant to this subchapter, pursuant to Chapter 18 of Title 2.

(c) No facility shall be subject to civil liability that in good faith relies on a criminal background check to terminate, or to refuse to offer employment to, any individual.

(Apr. 20, 1999, D.C. Law 12-238, § 4, 46 DCR 881.)

Prior Codifications. — 1981 Ed., § 32-1353.

Legislative history of Law 12-238. — For

legislative history of D.C. Law 12-238, see Historical and Statutory Notes following § 44-551.

§ 44-554. Rules.

The Mayor may issue rules to implement this subchapter, including procedures for additional enforcement actions for violation of this subchapter and the setting of fees in accordance with the provisions of subchapter I of Chapter 5 of Title 2.

(Apr. 20, 1999, D.C. Law 12-238, § 5, 46 DCR 881.)

Prior Codifications. — 1981 Ed., § 32-1354.

Legislative history of Law 12-238. — For

legislative history of D.C. Law 12-238, see Historical and Statutory Notes following § 44-551.

CHAPTER 6. HEALTHCARE ENTITY CONVERSION.

Sec.	Sec.
44-601. Findings.	44-607. Declaratory judgment.
44-602. Definitions.	44-608. Conversion fee.
44-603. Conversion approval.	44-609. Violations and penalties for noncompliance.
44-604. Charitable trusts.	44-610. Rules.
44-605. Mandatory condition precedent.	
44-606. Process of review.	

§ 44-601. Findings.

The Council finds and declares the following:

(1) Charitable healthcare entities hold all their assets in trust, and those assets are irrevocably dedicated, as a condition of their tax-exempt status, to the specific charitable purposes set forth in the articles of incorporation of the entities.

(2) The public is the beneficiary of that trust.

(3) Healthcare entities have a substantial and beneficial effect on the quality of life of the people of the District of Columbia, providing as part of their charitable mission a large list of services to low-income families and the poor, elderly, and people with disabilities.

(4) Transfers of the assets of healthcare entities, such as by sale, joint venture, or other sharing of assets, to for-profit entities directly affect the charitable uses of those assets and may adversely affect the public as the beneficiary of the charitable assets.

(5) The Attorney General for the District of Columbia is entrusted by common law to bring actions on behalf of the public in the event of a breach of the charitable trust of a healthcare entity and to represent the public in the sale or other transfer of the assets of a healthcare entity.

(6) It is in the best interest of the public to ensure that the public interest is fully protected whenever the assets or operations of a healthcare entity are transferred, directly or indirectly, from a charitable trust to a for-profit or mutual benefit entity.

(7) The approval by the Attorney General for the District of Columbia of any transfer of assets or operations is necessary to ensure the protection of these trusts.

(Oct. 23, 1997, D.C. Law 12-32, § 2, 44 DCR 4819; Apr. 20, 1999, D.C. Law 12-264, § 34, 46 DCR 2118; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638; Apr. 24, 2007, D.C. Law 16-305, § 71, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 32-551.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

D.C. Law 16-305, in par. (3), substituted “people with disabilities” for “disabled”.

Legislative history of Law 12-32. — Law 12-32, the “Healthcare Entity Conversion Act of 1997,” was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on. The Bill was adopted on first

and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128 and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 44-102.01.

§ 44-602. Definitions.

For the purposes of this chapter, the term:

(1) “Applicant” means a healthcare entity or a for-profit entity that applies to the State Health Planning and Development Agency or the Commissioner of Insurance and Securities [Commissioner of the Department of Insurance, Securities, and Banking] for approval of a conversion.

(2) “Authorized person” means a person who (A) controls, is controlled by, or is under common control with, a for-profit entity, directly or indirectly, through one or more intermediaries, (B) has entered into an agreement or contract, including a nonbinding letter of intent to acquire, or be acquired, through merger or other consolidation with a healthcare entity, or (C) a person who is an officer, director, agent, or managing employee of such an entity.

(3) “Conversion” means any agreement or transaction by a healthcare entity to sell, transfer, lease, exchange, option, convey, or otherwise dispose of, directly or indirectly, all of its assets, or a material amount of its assets, or control, responsibility, or governance of its assets, to a for-profit entity, including one that results from or is created in connection with the transaction or agreement.

(4) Repealed.

(5) “For-profit entity” means any corporation, mutual benefit corporation, trust, estate, partnership, limited liability company, or other entities (including associations, joint stock companies, and insurance companies) that is organized and operated for profit; or any incorporated or unincorporated division, subdivision, branch, unit, or part of such an entity including one that results from or is created in connection with the conversion of a nonprofit healthcare entity.

(6) “Person” means an individual, partnership, association, corporation, or any other organization.

(Oct. 23, 1997, D.C. Law 12-32, § 3, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 69, 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 32-552.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

D.C. Law 16-19 repealed par. (4) which had read as follows: “(4) ‘Attorney General for the District of Columbia’ means the Attorney General for the District of Columbia.”

Legislative history of Law 12-32. — For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

§ 44-603. Conversion approval.

(a) Notwithstanding any other provisions of the law, a healthcare entity shall not execute a conversion to a for-profit entity without the approval of the Attorney General for the District of Columbia.

(b) The Attorney General for the District of Columbia shall review the conversion to determine whether charitable assets are adequately protected. A conversion shall not be approved unless necessary and appropriate steps have been taken by the healthcare entity, to safeguard the value of its charitable assets.

(c) In determining whether charitable assets have been adequately protected, the Attorney General for the District of Columbia shall consider the following:

(1) Whether the conversion is permitted under § 29-301.01 et seq., and other laws of the District of Columbia governing nonprofit persons, trusts, or charities or under Internal Revenue Service rules or policies governing the disposition of charitable assets;

(2) Whether the healthcare entity exercised due diligence in deciding to sell or transfer a material amount of assets or control of operation, in selecting the purchaser, and in negotiating the terms and conditions of the conversion;

(3) Whether the procedure used by the healthcare entity in making its decision was fair and objective, and whether appropriate independent expert assistance was used;

(4) Whether any authorized person is not in full compliance with any federal, state, or local laws or requirements in every jurisdiction where the applicant operates or is licensed to do business;

(5) Whether any authorized person has been convicted of violating any federal or state law or regulation (including, without limitation, laws or regulations relating to the delivery of health care items or health care services, reimbursement for health care services, employer/employee relations, and environmental regulation) or has been indicted, is currently being investigated, or has entered into a settlement agreement in connection with the violation of any law or regulation;

(6) Whether the for-profit entity is financially sound and has the financial and management capacity to operate the healthcare entity, a department or division thereof, or any entity resulting from the conversion;

(7) Whether the for-profit entity has disclosed all potential conflicts of interest, including, but not limited to, conflicts of interest related to board members, executives, members of the medical staff of the healthcare entity, and experts retained by the healthcare entity, or the parties to the conversion;

(8) Whether the conversion will result in the enrichment of any person;

(9) Whether the healthcare entity will receive reasonably fair value for its assets and whether the market value of those assets has not been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease;

(10) Whether charitable funds are placed at unreasonable short-term or long term risk;

(11) Whether any management contract under the conversion is for reasonably fair value;

(12) Whether the charitable assets have been placed in a charitable trust controlled independently of the for-profit entity or other parties to the conversion and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community; and

(13) Whether a right of first refusal has been retained by the healthcare entity to permit repurchase of the assets by a successor nonprofit person if and when the for-profit entity that results from conversion is subsequently proposed for sale, conversion, or merger.

(d) The Attorney General for the District of Columbia shall assess the for-profit entity the reasonable costs related to, and shall expend such amounts for, the review of the proposed conversion determined by the Attorney General for the District of Columbia to be necessary or appropriate. Such reasonable costs may include further expert review of the conversion, and a process to educate the public about the conversion and to obtain public comment.

(July 1, 1997, D.C. Law 12-32, § 4, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

Cross references. — Hospital and medical services corporation regulation, exclusivity of provisions, see § 31-3502.

Prior Codifications. — 1981 Ed., § 32-553.

Effect of amendments. — D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Emergency legislation. — For temporary (90-day) amendment of section, see § 3 of the

East of Anacostia River Acute Care Hospital Services Emergency Amendment Act of 1999 (D.C. Act 13-189, November 22, 1999, 46 DCR 10412).

Legislative history of Law 12-32. — For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-604. Charitable trusts.

(a) If the Attorney General for the District of Columbia determines, pursuant to § 44-603(12), that the charitable assets of a healthcare entity have not been placed in a charitable trust controlled independently of the for-profit entity, or other parties to the conversion, and used for appropriate charitable purposes consistent with the healthcare entity's purposes or operation in the affected community, the Attorney General for the District of Columbia shall ensure that a charitable trust is established.

(b) The governance of any charitable trust established to safeguard assets subject to the provisions of this chapter shall be subject to review by the Attorney General for the District of Columbia, who shall ensure the following: that the governance of the charitable trust is broadly based in the community historically served by the healthcare entity; that the participation on the board of the charitable trust be persons involved in negotiating the conversion shall be limited; that such limitations may take the form of restrictions on the number of representatives or their length of services; and that the charitable activities of the nonprofit person shall not be used to satisfy the charitable obligations of the for-profit entity.

(Oct. 23, 1997, D.C. Law 12-32, § 5, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-554.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 12-32. — For

legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-605. Mandatory condition precedent.

The conversion approval required by § 44-603 shall be a condition precedent to the issuance of a Certificate of Need or a Certificate of Authority, permit, license, and any other type of official approval, except zoning approval, by an agency or officer or employee of the District government which is necessary for a particular health project.

(Oct. 23, 1997, D.C. Law 12-32, § 6, 44 DCR 4819.)

Cross references. — Hospital and medical services corporation regulation, exclusivity of provisions, see § 31-3502.

Prior Codifications. — 1981 Ed., § 32-555.

Legislative history of Law 12-32. — For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

§ 44-606. Process of review.

(a) The Attorney General for the District of Columbia shall approve or disapprove a conversion within 60 days of receiving a request from the applicable agency.

(b) Prior to issuing a decision, the Attorney General for the District of Columbia shall publish the request in at least two newspapers of general publication and may hold a public hearing to receive public testimony. Notice of a public hearing shall be published at least 10 days prior to the hearing. The Attorney General for the District of Columbia may increase the number days of review provided such request will not unnecessarily delay the applicable agency’s decision. The Attorney General for the District of Columbia shall hold a public hearing if requested by any interested person. The Attorney General for the District of Columbia may request or subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for the purpose of the public hearing.

(c) The Attorney General for the District of Columbia shall employ the services of an independent expert to assess the value of the charitable assets. If the conversion is approved, the Attorney General for the District of Columbia may issue conditions and recommendations regarding the charitable assets. The costs of the review required by this section shall be assessed against the applicant.

(Oct. 23, 1997, D.C. Law 12-32, § 7, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-556.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 12-32. — For

legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-607. Declaratory judgment.

A for-profit entity or healthcare entity that has participated in the review process may bring an action for declaratory judgment against the decision of the Attorney General for the District of Columbia and may appeal the decision to the Superior Court according to the standards set forth in § 2-510.

(Oct. 23, 1997, D.C. Law 12-32, § 8, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

Cross references. — Hospital and medical services corporation regulation, exclusivity of provisions, see § 31-3502.

Prior Codifications. — 1981 Ed., § 32-557.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 12-32. — For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-608. Conversion fee.

If a nonprofit entity is a party to a conversion approved pursuant to § 44-603, the District shall make an assessment, to recover part of the charitable assets, equal to 10% of the amount of the real property tax the healthcare entity would have paid during the past 5 years had it not been exempt from federal income taxation under sections 501(c) or (e) of the Internal Revenue Code. Such amount shall be paid in three equal installments.

(July 1, 1997, D.C. Law 12-32, § 9, 44 DCR 4819.)

Prior Codifications. — 1981 Ed., § 32-558.

Legislative history of Law 12-32. — For legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

References in text. — Section 501 of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501.

§ 44-609. Violations and penalties for noncompliance.

(a) The Attorney General for the District of Columbia may seek injunctive relief if the Attorney General for the District of Columbia determines that a person is offering, developing, or operating an entity in violation of this chapter.

(b) Any person, including the principal officers or agents of the for-profit entity, the healthcare entity, or any other party to a conversion subject to the provisions of this chapter, who violates any provision of this chapter by the willful failure to obtain the approval of the Attorney General for the District of Columbia required by § 44-603, or who deviates from the provision of any decision approving a conversion issued pursuant to § 44-603, upon conviction, shall be subject to a fine of not less than \$2,500 and not more than \$10,000. Each day of a continuing violation shall constitute a separate offense.

(Oct. 23, 1997, D.C. Law 12-32, § 10, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-559.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 12-32. — For

legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-610. Rules.

The requirements of this chapter shall become fully operative on October 23, 1997, without adoption by the Attorney General for the District of Columbia of implementing regulations. In its discretion, the Attorney General for the District of Columbia may issue emergency or proposed rules to implement the provisions of this chapter. The proposed rules, if issued, shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules within the 45-day period, the proposed rules shall be deemed approved.

(Oct. 23, 1997, D.C. Law 12-32, § 11, 44 DCR 4819; Apr. 13, 2005, D.C. Law 15-354, § 66, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-560.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 12-32. — For

legislative history of D.C. Law 12-32, see Historical and Statutory Notes following § 44-601.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

CHAPTER 6A. HOSPITAL ASSESSMENTS.

Sec.

44-631. Definitions.

44-632. Hospital Fund.

44-633. Assessments on hospitals.

44-634. Interest and penalties.

44-635. Appeals.

Sec.

44-636. Federal determinations; suspension and termination of assessment.

44-637. Rules.

44-638. Sunset.

§ 44-631. Definitions.

For the purposes of this chapter, the term:

(1) "Hospital" shall have the same meaning as provided in § 44-501(a)(1), but excludes St. Elizabeths Hospital and any hospital operated by the federal government.

(2) "Medicaid" means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), and by § 1-307.02, and administered by the Department of Health Care Finance.

(Sept. 24, 2010, D.C. Law 18-223, § 5012, 57 DCR 6242.)

Temporary Addition of Section. — Section 1102 of D.C. Law 18-222 added a section to read as follows:

"Sec. 1102. Definitions.

"For the purposes of this act, the term:

"(1) 'Hospital' has the same meaning as set forth in section 2(a)(1) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a)(1)), but excludes St. Elizabeths Hospital and any hospital operated by the federal government.

"(2) 'Medicaid' means the medical assistance programs authorized by title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), and by section 1 of An Act To enable the District of Columbia to receive Federal financial assistance under title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), and administered by the Department of Health Care Finance."

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1102 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 5012 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see §§ 1102 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

§ 44-632. Hospital Fund.

(a) There is established as a nonlapsing fund the Hospital Fund, which shall be used solely to fund District State Medicaid services.

(b) There shall be deposited into the Hospital Fund:

(1) Assessments collected under this chapter;

(2) Interest and penalties collected under this chapter;

- (3) Matching federal funds on assessments; and
- (4) Other amounts collected under this chapter.

(c) All funds deposited in the Hospital Fund; and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the purpose set forth in subsection (a) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(Sept. 24, 2010, D.C. Law 18-223, § 5013, 57 DCR 6242.)

Temporary Addition of Section. — Section 1103 of D.C. Law 18-222 added a section to read as follows:

“Sec. 1103. Hospital Fund.

“(a) There is established as a nonlapsing fund the Hospital Fund, which shall be used solely to fund District State Medicaid services.

“(b) There shall be deposited into the Hospital Fund:

“(1) Assessments collected under this act;

“(2) Interest and penalties collected under this act;

“(3) Matching federal funds on assessments; and

“(4) Other amounts collected under this act.

“(c) All funds deposited in the Hospital Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the purpose set forth in subsection (a) of this section with-

out regard to fiscal year limitation, subject to authorization by Congress.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1103 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 1103 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) addition, see § 5013 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

§ 44-633. Assessments on hospitals.

(a) Each hospital in the District of Columbia shall pay to the Mayor an annual assessment as follows:

(1) For fiscal year 2010, \$500 per licensed bed, which shall be paid by September 1, 2010, and which shall be deposited in the Medical Liability Captive Trust Fund, established by § 1-307.91, to be used for the purposes of this fund; and

(2) For fiscal year 2011, \$2,529 per licensed bed and for fiscal years 2012 through 2014, \$3,788 per licensed bed, which shall be paid based on a schedule determined by the Mayor and which shall be deposited in the Hospital Fund, established by § 44-632, to be used for the purpose of this fund.

(b) The Chief Financial Officer may determine the manner in which payments are to be made under this chapter, including whether payments owed by each hospital pursuant to subsection (a) of this section shall be paid electronically.

(Sept. 24, 2010, D.C. Law 18-223, § 5014, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 512, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 8182, 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-370, in subsec. (a)(2), substituted “\$2,000” for “\$1,500”.

D.C. Law 19-21, in subsec. (a)(2), substituted “For fiscal year 2011, \$2,529 per licensed bed and for fiscal years 2012 through 2014, \$3,788 per licensed bed,” for “For fiscal years 2011 through 2014, \$1,500 per licensed bed.”

Temporary Addition of Section. — Section 1104 of D.C. Law 18-222 added a section to read as follows:

“Sec. 1104. Assessments on hospitals.

“(a) Each hospital in the District of Columbia shall pay to the Mayor an annual assessment as follows:

“(1) For fiscal year 2010, \$500 per licensed bed, which shall be paid by September 1, 2010, and which shall be deposited in the Medical Liability Captive Trust Fund, established by section 12 of the District of Columbia Medical Liability Captive Insurance Agency Establishment Act of 2008, effective July 18, 2008 (D.C. Law 17-196; D.C. Official Code § 1-307.91), to be used for the purposes of this fund.

“(2) For fiscal years 2011 through 2014, \$1,500 per licensed bed, which shall be paid based on a schedule determined by the Mayor and which shall be deposited in the Hospital Fund, established by section 1103 to be used for the purpose of this fund.

“(b) The Chief Financial Officer may determine the manner in which payments are to be made under this act, including whether payments owed by each hospital pursuant to subsection (a) of this section shall be paid electronically.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1104 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 5014 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see § 1104 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 512 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 8032 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-407.

Short title. — Short title: Section 511 of D.C. Law 18-370 provided that subtitle B of title V of the act may be cited as “Hospital Assessment Amendment Act of 2010”.

Short title: Section 8181 of D.C. Law 19-21 provided that subtitle S of title VIII of the act may be cited as “Hospital Assessment Amendment Act of 2011”.

Editor’s notes. — Section 513 of D.C. Law 18-370 provided: “Sec. 513. Applicability. This subtitle shall apply as of October 1, 2010.”

§ 44-634. Interest and penalties.

(a) If a hospital fails to pay the full amount of an assessment by the date required by this chapter, or by rules issued pursuant to this chapter, the hospital shall pay, in addition to the required assessment:

(1) Interest at the rate of 1.5% of the assessment per month or any fraction thereof, which shall be added to the unpaid balance; and

(2) An administrative penalty of 10% of the assessment.

(b) The District of Columbia shall have a lien upon a hospital’s real and personal property located in the District of Columbia for any assessments, interest, or administrative penalties that are due under this chapter, or rules issued pursuant to this chapter.

(c) An action brought to enforce the provisions of this section shall be

brought in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia in the name of the District of Columbia.

(Sept. 24, 2010, D.C. Law 18-223, § 5015, 57 DCR 6242.)

Temporary Addition of Section. — Section 1105 of D.C. Law 18-222 added a section to read as follows:

“Sec. 1105. Interest and penalties.

“(a) If a hospital fails to pay the full amount of an assessment by the date required by this act, or by rules issued pursuant to this act, the hospital shall pay, in addition to the required assessment:

“(1) Interest at the rate of 1.5% of the assessment per month or any fraction thereof, which shall be added to the unpaid balance; and

“(2) An administrative penalty of 10% of the assessment.

“(b) The District of Columbia shall have a lien upon a hospital’s real and personal property located in the District of Columbia for any assessments, interest, or administrative penalties that are due under this act, or rules issued pursuant to this act.

“(c) An action brought to enforce the provisions of this section shall be brought in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia in the name of the District of Columbia.”

Section 2002(b) of D.C. Law 18-222 provided

that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1105 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 5015 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see § 1104 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 512 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

For temporary (90 day) amendment of section, see § 8032 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

§ 44-635. Appeals.

(a) A hospital may contest the amount of an assessment, including any interest or administrative penalties, imposed under this chapter, or by rules issued pursuant to this chapter, by filing a notice of appeal with the Office of Administrative Hearings within 60 days after the date of the notice of a determination or redetermination of an assessment based on an audit of information.

(b) The Office of Administrative Hearings shall conduct a hearing on the appeal filed under subsection (a) of this section subject to the provisions of subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], governing adjudication of contested cases, and pursuant to the rules of the Office of Administrative Hearings.

(c) Before filing an appeal pursuant to subsection (a) of this section, the hospital shall pay to the Mayor the assessment and any administrative penalties and interest due on the assessment. The filing of a notice of appeal shall not act as a stay on the requirement to pay payment of the assessment, interest, and administrative penalties.

(Sept. 24, 2010, D.C. Law 18-223, § 5016, 57 DCR 6242.)

Temporary Addition of Section. — Section 1106 of D.C. Law 18-222 added a section to read as follows:

“Sec. 1106. Appeals.

“(a) A hospital may contest the amount of an assessment, including any interest or administrative penalties, imposed under this act, or by rules issued pursuant to this act, by filing a notice of appeal with the Office of Administrative Hearings within 60 days after the date of the notice of a determination or redetermination of an assessment based on an audit of information.

“(b) The Office of Administrative Hearings shall conduct a hearing on the appeal filed under subsection (a) of this section subject to the provisions of Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), governing adjudication of contested cases, and pursuant to the rules of the Office of Administrative Hearings.

“(c) Before filing an appeal pursuant to subsection (a) of this section, the hospital shall pay to the Mayor the assessment and any adminis-

trative penalties and interest due on the assessment. The filing of a notice of appeal shall not act as a stay on the requirement to pay payment of the assessment, interest, and administrative penalties.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1106 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 5016 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see §§ 1106 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

§ 44-636. Federal determinations; suspension and termination of assessment.

(a) If the federal government determines that an assessment imposed on a hospital pursuant to this chapter does not satisfy the requirements for federal financial participation set forth in section 1903(w) of the Social Security Act, approved July 30, 1965 (70 Stat. 349; 42 U.S.C. § 1396b(w)), the determination shall not affect the validity, amount, applicable rate, or any other terms of an assessment on other hospitals imposed by this chapter.

(b) If the federal government determines that an exclusion for hospitals specified under this chapter would prevent an assessment imposed by this chapter from qualifying as a broad-based health care related tax, as that term is defined in section 1903(w)(3)(B) of the Social Security Act, approved July 30, 1965 (79 Stat. 349; 42 U.S.C. § 1396b(w)(3)(B)), the exclusion shall not be made.

(Sept. 24, 2010, D.C. Law 18-223, § 5017, 57 DCR 6242.)

Temporary Addition of Section. — Section 1107 of D.C. Law 18-222 added a section to read as follows:

“Sec. 1107. Federal determinations; suspension and termination of assessment.

“(a) If the federal government determines that an assessment imposed on a hospital pursuant to this act does not satisfy the requirements for federal financial participation set forth in section 1903(w) of the Social Security Act, approved July 30, 1965 (70 Stat. 349; 42 U.S.C. § 1396b(w)), the determination shall

not affect the validity, amount, applicable rate, or any other terms of an assessment on other hospitals imposed by this act.

“(b) If the federal government determines that an exclusion for hospitals specified under this act would prevent an assessment imposed by this act from qualifying as a broad-based health care related tax, as that term is defined in section 1903(w)(3)(B) of the Social Security Act, approved July 30, 1965 (79 Stat. 349; 42 U.S.C. § 1396b(w)(3)(B)), the exclusion shall not be made.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1107 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 5017 of Fiscal Year 2011 Budget Support Emergency

Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see §§ 1107 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

§ 44-637. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(Sept. 24, 2010, D.C. Law 18-223, § 5018, 57 DCR 6242.)

Temporary Addition of Section. — Section 1108 of D.C. Law 18-222 added a section to read as follows: “Sec. 1108. Rules. ”The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this act.”

Section 2002(b) of D.C. Law 18-222 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 1108 of Fiscal Year 2010 Balanced Budget Support Emergency Act

of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) addition, see § 5018 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) addition, see §§ 1108 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

§ 44-638. Sunset.

This chapter shall expire on September 30, 2014.

(Sept. 24, 2010, D.C. Law 18-223, § 5019, 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see § 5019 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 18-223. — For Law 18-223, see notes following § 44-631.

CHAPTER 7. HOSPITALS, ASYLUMS, CHARITIES GENERALLY.

Subchapter I. General

Sec.

- 44-701. Limitation on erection of hospital for contagious diseases.
- 44-702. Children's Tuberculosis Sanatorium — Construction and equipping authorized.
- 44-703. Providence Hospital authorized to conduct hospital, clinic and school.
- 44-704. Standards of indigency; emergency and semi-indigent patients.
- 44-705. Payments to needy patients.
- 44-706. Institutional care under contract.
- 44-707. Stipends for patients and certain resident employees.
- 44-708. Benefits in lieu of salary for certain workers in District facilities.
- 44-709. Mayor to visit, investigate and report on certain charitable institutions.
- 44-710. Mayor authorized to visit, investigate and report on certain organizations.
- 44-711. Appropriations for charitable and reformatory institutions to be lien on property.
- 44-712. Terms of Congressmen as trustees or directors of certain corporations or institutions.
- 44-713. Compensation of physicians to the poor.

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- 44-714. Conflicts of interest by directors or trustees of certain charitable institutions.
- 44-715. Congressional policy as to appropriations to churches or religious entities.
- 44-716. Home for Aged and Infirm — Sale of surplus products.
- 44-717. Home for Aged and Infirm — Admission of pay patients.

Subchapter II. Fees for Clinical Services and Asbestos Abatement

- 44-731. Fees for clinical services.
- 44-732. Asbestos abatement — Task Force established.
- 44-733. Asbestos abatement — Rules and regulations.
- 44-734. Asbestos abatement — Appropriations.

Subchapter III. Conveyance of Property to Columbia Hospital

- 44-751. In general.
- 44-752. [Repealed].
- 44-753. Creation of lien in favor of United States.

Subchapter IV. Repealed Provisions

- 44-771 to 44-786. [Repealed].

*Subchapter I. General.***§ 44-701. Limitation on erection of hospital for contagious diseases.**

No building for use as a public or private hospital for contagious diseases shall be erected in the District of Columbia within 300 feet of any building owned by a private individual or any other party than the one erecting the building.

(Mar. 2, 1895, 28 Stat. 758, ch. 176.)

Cross references. — Public health, rules and regulations, prevention and control of communicable diseases, see § 7-131.

Prior Codifications. — 1981 Ed., § 32-112. 1973 Ed., § 32-311.

Temporary Addition of Section. — Sections 2 to 8 of Law 17-51 added sections to read as follows:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'Emergency' means a situation, physical condition, or one or more practices, methods, or operations that presents imminent danger of

death or serious physical or mental harm to a patient, including imminent or actual abandonment of an occupied hospital.

"(2) 'Habitual violation' means a violation of the standards of health, safety, or patient care established under District or federal law that, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to patients.

"(3) 'Hospital' means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related care for a variety of physical or mental conditions and

may provide outpatient services, such as emergency care.

"(4) 'Licensee' means a person or other legal entity, other than a receiver appointed pursuant to section 3, that is licensed or required to be licensed to operate a hospital.

"(5) 'Owner' means the holder of the title to the real estate on which the hospital is maintained.

"(6) 'Patient' means a person living in or receiving care from a hospital.

"(7) 'Substantial violation' means a violation of the standards of health, safety, or patient care established under District or federal law that presents a reasonable likelihood of serious physical or mental harm to patients.

"Sec. 3. Appointment of a receiver; grounds; process.

"(a) The Mayor may bring an action in the Superior Court of the District of Columbia requesting the appointment of a receiver to operate a hospital.

"(b) The following circumstances are grounds for the appointment of a receiver:

"(1) A hospital intends to close, but has not arranged for the orderly transfer of patients at least 30 days prior to its closure date;

"(2) An emergency, as defined in section 2(1), exists at the hospital; or

"(3) A habitual or substantial violation, as defined in section 2(2) and (7), respectively, exists at the hospital.

"(c)(1) The court shall hold a hearing no later than 10 days after an action requesting the appointment of a receiver is filed, unless all parties agree to a later date.

"(2) Notice of the hearing shall be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided.

"(3) The Mayor shall post notice of the hearing, using a court-approved form, in a conspicuous place in the hospital, for not less than 3 days before the hearing.

"(4) After the hearing, the court may appoint a receiver if it finds that any one of the grounds for an appointment set forth in subsection (b) of this section has been satisfied.

"(d)(1) The court may:

"(A) Appoint any person considered appropriate as receiver, except a District employee; and

"(B) Remove a receiver for good cause." (2) The court shall set a reasonable compensation for the receiver, which shall be paid from the revenue of the hospital.

"(3) A receiver shall not be considered an agent of the District of Columbia.

"Sec. 4. Powers and duties of a receiver.

"(a) A receiver appointed pursuant to this act shall have such powers as the court may direct to:

"(1) Operate the hospital;

"(2) Remedy the conditions that constituted the grounds for the receivership;

"(3) Protect the health, safety, and welfare of the patients; and

"(4) Preserve the assets and property of the patients, owner, and licensee.

"(b) With approval of the court, a receiver shall have the authority to:

"(1) Remedy violations of District or federal laws governing the operation of the hospital;

"(2) Hire, direct, manage, and discharge any employee, including the administrator of the hospital;

"(3) Receive and expend in a reasonable and prudent manner the revenues of the hospital received by the hospital during the 30-day period preceding the date of his or her appointment and any revenue due thereafter;

"(4) Continue the operation of the hospital;

"(5) Continue the care of the patients;

"(6) Correct and eliminate any deficiency of the hospital that endangers the safety or health of the patients; and

"(7) Exercise such additional powers and perform such additional duties, including regular accountings, as the court considers appropriate.

"(c)(1) The receiver shall:

"(A) Apply the revenues of the hospital to current operating expenses and, subject to subparagraphs (B) and (C) of this paragraph, to debts incurred by the licensee prior to the appointment of the receiver;

"(B) Ask the court for direction in the treatment of debts incurred prior to his or her appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the hospital, or where payment of a debt will interfere with the purposes of the receivership; and

"(C) Give priority to expenditures needed for current, direct patient care.

"(2)(A) If a receiver does not have sufficient funds to cover expenditures needed to prevent or remove jeopardy to the patients, the receiver may petition the court for permission to borrow non-District funds for this purpose. Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee, and the Mayor.

"(B) The court, after a hearing, may authorize the receiver to borrow money upon specified terms of repayment and pledge security, if necessary, if the court determines:

"(i) That the hospital should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy; or

"(ii) That the hospital should be closed and that the loan is necessary to prevent or remove jeopardy to patients for the limited period of time they are awaiting transfer to another hospital or other facility.

"(d) A receiver may not close a hospital without leave of the court. In ruling on the issue of closure, the court shall consider:

"(1) The rights and best interests of the patients;

"(2) The availability of suitable alternative placements;

"(3) The rights, interests, and obligations of the owner and licensee;

"(4) The licensure status of the hospital; and

"(5) Any other factors the court considers relevant.

"(e) The owner and the licensee shall be divested of possession and control of the hospital during the period of receivership, under the conditions the court specifies.

"Sec. 5. Court order to have effect of a license. An order appointing a receiver pursuant to section 3 shall have the effect of a license of operation for the duration of the receivership. The receiver shall be responsible to the court for the conduct of the hospital during the receivership, and a violation of regulations governing the conduct of the hospital, if not promptly corrected, shall be reported to the court.

"Sec. 6. Court review and termination of a receivership.

"(a) The court shall review the continued necessity of a receivership at least semiannually.

"(b)(1) The court shall terminate a receivership when it certifies that the conditions that prompted the receivership have been corrected or, in the case of a discontinuance of operation, when the patients are safely relocated.

"(2) The court shall not terminate a receivership in favor of the former licensee or of a new licensee, unless the person, or entity, assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

"Sec. 7. Liability of receiver.

"No person may bring suit against a receiver appointed pursuant to section 3 without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, a receiver shall be liable only for actions taken in his or her official capacity, and any adverse judgment shall be satisfied out of receivership assets.

"Sec. 8. Liability of District of Columbia.

"The District of Columbia shall not be liable for repayment of funds borrowed by a receiver during the course of the receivership or responsible for any financial obligations of the hospital."

Section 10(b) of D.C. Law 17-51 provided that the act shall expire after 225 days of its having taken effect.

Sections 5 and 6 of D.C. Law 18-154 added sections to read as follows:

"Sec. 5. Hospital receivership.

"(a) For the purposes of this section, the term:

"(1) 'Emergency' means a situation, physical condition, or one or more practices, methods, or operations that presents imminent danger of death or serious physical or mental harm to a patient, including imminent or actual abandonment of an occupied hospital.

"(2) 'Habitual violation' means a violation of the standards of health, safety, or patient care established under District or federal law that, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to patients.

"(3) 'Hospital' means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related care for a variety of physical or mental conditions, and may provide outpatient services, such as emergency care.

"(4) 'Licensee' means a person or other legal entity, other than a receiver appointed pursuant to this section, that is licensed or required to be licensed to operate a hospital.

"(5) 'Owner' means the holder of the title to the real estate on which the hospital is maintained.

"(6) 'Patient' means a person living in or receiving care from a hospital.

"(7) 'Substantial violation' means a violation of the standards of health, safety, or patient care established under District or federal law that presents a reasonable likelihood of serious physical or mental harm to patients.

"(b) The Mayor may bring an action in the Superior Court of the District of Columbia requesting the appointment of a receiver to operate a hospital on the following grounds:

"(1) A hospital intends to close, but has not arranged for the orderly transfer of patients at least 30 days prior to its closure date;

"(2) An emergency exists at the hospital;

"(3) A habitual or substantial violation exists at the hospital; or

"(4) Insolvency or lack of financial resources of an owner or the licensee has placed the continued operation of the facility in jeopardy.

"(c)(1) The court shall hold a hearing no later than 10 days after an action requesting the appointment of a receiver is filed, unless all parties agree to a later date.

"(2) Notice of the hearing shall be served on both the owner and the licensee not less than 5 days before the hearing. If either the owner or the licensee cannot be served, the court shall specify the alternative notice to be provided.

"(3) The Mayor shall post notice of the hearing, using a court-approved form, in a conspicuous place in the hospital, for not less than 3 days before the hearing.

"(4) After the hearing, the court may appoint a receiver if it finds that any one of the grounds for an appointment set forth in subsection (b) of this section has been satisfied.

"(d)(1) The court may:

"(A) Appoint any person considered appropriate as receiver, except a District employee; and

"(B) Remove a receiver for good cause.

"(2) The court shall set a reasonable compensation for the receiver, which shall be paid from the revenue of the hospital.

"(3) A receiver shall not be considered an agent of the District of Columbia.

"(e) A receiver appointed pursuant to this act shall have such powers as the court may direct to:

"(1) Operate the hospital;

"(2) Remedy the conditions that constituted the grounds for the receivership;

"(3) Protect the health, safety, and welfare of the patients;

"(4) Preserve the assets and property of the patients, owner, and licensee;

"(5) Remedy violations of District or federal law governing the operation of the hospital;

"(6) Hire, direct, manage, and discharge any employee, including the administrator of the hospital;

"(7) Receive and expend, in a reasonable and prudent manner, the revenues of the hospital received by the hospital during the 30-day period preceding the date of his or her appointment and any revenue due thereafter;

"(8) Continue the operation of the hospital;

"(9) Continue the care of the patients;

"(10) Correct and eliminate any deficiency of the hospital that endangers the safety or health of the patients; and

"(11) Exercise such additional powers and perform such additional duties, including regular accountings, as the court considers appropriate.

"(f)(1) The receiver shall:

"(A) Apply the revenues of the hospital to current operating expenses and, subject to subparagraphs (B) and (C) of this paragraph, to debts incurred by the licensee prior to the appointment of the receiver;

"(B) Ask the court for direction in the treatment of debts incurred prior to his or her appointment where such debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the hospital, or where payment of a debt will interfere with the purposes of the receivership; and

"(C) Give priority to expenditures needed for current, direct patient care.

"(2)(A) If a receiver does not have sufficient funds to cover expenditures needed to prevent or remove jeopardy to the patients, the receiver may petition the court for permission to borrow non-District funds for this purpose. Notice of the receiver's petition to the court for permission to borrow must be given to the owner, the licensee, and the Mayor.

"(B) The court, after a hearing, may authorize the receiver to borrow money upon specified terms of repayment and pledge security, if necessary, if the court determines:

"(i) That the hospital should not be closed and that the loan is reasonably necessary to prevent or remove jeopardy; or

"(ii) That the hospital should be closed and that the loan is necessary to prevent or remove jeopardy to patients for the limited period of time they are awaiting transfer to another hospital or other facility.

"(g) A receiver may not close a hospital without leave of the court. In ruling on the issue of closure, the court shall consider:

"(1) The rights and best interests of the patients;

"(2) The availability of suitable alternative placements;

"(3) The rights, interests, and obligations of the owner and licensee;

"(4) The licensure status of the hospital; and

"(5) Any other factors the court considers relevant.

"(h) The owner and the licensee shall be divested of possession and control of the hospital during the period of receivership, under the conditions the court specifies.

"(i) An order appointing a receiver pursuant to this section shall have the effect of a license of operation for the duration of the receivership. The receiver shall be responsible to the court for the conduct of the hospital during the receivership, and a violation of regulations governing the conduct of the hospital, if not promptly corrected, shall be reported to the court.

"(j)(1) The court shall review the continued necessity of a receivership at least semiannually.

"(2) The court shall terminate a receivership when it certifies that the conditions that prompted the receivership have been corrected or, in the case of a discontinuance of operation, when the patients have been safely relocated.

"(3) The court shall not terminate a receivership in favor of the former licensee or of a new licensee, unless the person, or entity, assumes all obligations incurred by the receiver and provides collateral or other assurances of payment considered sufficient by the court.

"(k) No person may bring suit against a receiver appointed pursuant to this section without first securing leave of the court. Except in cases of gross negligence or intentional wrongdoing, a receiver shall be liable only for actions taken in his or her official capacity and any adverse judgment shall be satisfied out of receivership assets.

"(l) The District of Columbia shall not be liable for repayment of funds borrowed by a receiver during the course of the receivership or

responsible for any financial obligations of the hospital.

"Sec. 6. First source employment agreement. "The United Medical Center shall enter into a first source employment agreement with the Department of Employment Services with respect to the funds authorized in this act."

Section 8(b) of D.C. Law 18-154 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) additions, see §§ 2 to 9 of Establishment of Hospital Receivership Emergency Act

of 2007 (D.C. Act 17-81, July 27, 2007, 54 DCR 7993).

For temporary (90 day) additions, see §§ 2 to 8 of Establishment of Hospital Receivership Congressional Review Emergency Act of 2007 (D.C. Act 17-139, October 17, 2007, 54 DCR 10731).

For temporary (90 day) addition, see § 5 of Healthy DC Equal Access Fund and Hospital Stabilization Emergency Amendment Act of 2009 (D.C. Act 18-310, February 18, 2010, 57 DCR 1635).

§ 44-702. Children's Tuberculosis Sanatorium — Construction and equipping authorized.

The Mayor of the District of Columbia is authorized to acquire, by purchase, condemnation, or otherwise, a site, and to cause to be constructed thereon, in accordance with plans and specifications approved by such Mayor, suitable buildings and structures for use as a Children's Tuberculosis Sanatorium, including necessary approaches and roadways, heating and ventilating apparatus, furniture, equipment, and accessories.

(Mar. 1, 1929, 45 Stat. 1425, ch. 422, § 1.)

Prior Codifications. — 1981 Ed., § 32-113. 1973 Ed., § 32-312.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-703. Providence Hospital authorized to conduct hospital, clinic and school.

The Providence Hospital is authorized to conduct not only a hospital, clinic, and all the departments, staffs, and services usually connected therewith, but also a school for the education and training of nurses and interns with full power to examine the said nurses and interns and to issue suitable certificates evidencing the completion of their courses of training.

(Oct. 29, 1945, 59 Stat. 551, ch. 439, § 2.)

Prior Codifications. — 1981 Ed., § 32-116.

1973 Ed., § 32-316a.

§ 44-704. Standards of indigency; emergency and semi-indigent patients.

The Council of the District of Columbia shall establish from time to time reasonable standards of indigency for admission of patients to municipal hospitals of the District of Columbia; provided, that emergency and semi-indigent patients may be admitted to the general ward and tuberculosis ward of District of Columbia General Hospital on a full- or part-pay basis at such rates and under such regulations as may be established by the Council insofar as such admissions will not interfere with the admission of indigent patients; provided further, that the Mayor of the District of Columbia may enter into agreements with the States of Maryland and Virginia, or the political subdivisions thereof, for the care and treatment in such municipal hospitals of emergency patients who are indigent residents of such States or political subdivisions.

(June 27, 1942, 56 Stat. 441, ch. 452, § 1.)

Prior Codifications. — 1981 Ed., § 32-123. 1973 Ed., § 32-326.

Editor's notes. — Gallinger Municipal Hospital abolished: Gallinger Municipal Hospital was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, combined with Reorganization Order No. 52, District of Columbia Pound, dated June 30, 1953, and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. Prior to its redesignation the Order abolished the previously existing Gallinger Municipal Hospital and Health Department and transferred all of their positions and functions to the new Department. It further provided that within the Department, the District of Columbia General Hospital performs all functions previously performed by Gallinger Municipal Hospital. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions as stated in Organization Order No.

141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. Functions as stated in Reorganization Plan No. 2 of 1979, dated February 21, 1980, were transferred to the Department of Human Services.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(252) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Tort liability.

Determination of whether District of Columbia's function causing injury was governmental or proprietary is not a valid test to decide

whether District is immune from liability for the injury. *Spencer v. General Hospital of Dist. of Columbia*, 425 F.2d 479, 1969 U.S. App. LEXIS 10117 (C.A.D.C. 1969).

District of Columbia General Hospital was not immune from suit for injuries sustained by paying patient allegedly as result of negligent treatment on theory that District was a governmental entity. *Spencer v. General Hospital of Dist. of Columbia*, 425 F.2d 479, 1969 U.S. App. LEXIS 10117 (C.A.D.C. 1969).

Mere fact that injury was caused by a gov-

ernment operated entity will not bar an action. Absent legislative direction, courts must decide whether there are considerations present in an activity which warrant provision of immunity. *Spencer v. General Hospital of Dist. of Columbia*, 425 F.2d 479, 1969 U.S. App. LEXIS 10117 (C.A.D.C. 1969).

§ 44-705. Payments to needy patients.

The Mayor of the District of Columbia, pursuant to regulations prescribed by the Council of the District of Columbia, is authorized to furnish cash payments to needy patients in hospitals operated by or under contract (relating to the care of needy patients) with the District of Columbia in such amounts and at such times as he may determine.

(Oct. 26, 1973, 87 Stat. 504, Pub. L. 93-140, § 4.)

Prior Codifications. — 1981 Ed., § 32-124. 1973 Ed., § 32-331.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-706. Institutional care under contract.

The Mayor of the District of Columbia is authorized to contract with hospitals and other institutions for both the care of indigent or medically indigent patients in hospitals and the care and maintenance of persons for whom the District of Columbia is responsible. The Mayor may from time to time adjust the rates of reimbursement for such care by issuing rules pursuant to subchapter I of Chapter 5 of Title 2, and by filing a copy of proposed rate changes with the Council of the District of Columbia at least 30 days before their effective date. The 30-day period for Council review shall not include days that pass during a recess of the Council. The rates of reimbursement under the D.C. Medical Charities program in effect for the fiscal year ending September 30, 1985, shall thereafter remain in effect until adjusted by the Mayor in accordance with this section.

(Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 5; July 25, 1985, D.C. Law 6-11, § 2, 32 DCR 3230.)

Prior Codifications. — 1981 Ed., § 32-125. 1973 Ed., § 32-332.

Legislative history of Law 6-11. — Law 6-11 was introduced in Council and assigned Bill No. 6-174, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 30, 1985, and May 14, 1985, respectively. Signed by

the Mayor on May 30, 1985, it was assigned Act No. 6-25 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to Law 6-11, see Mayor's Order 86-37, March 3, 1986.

Delegation of authority pursuant to An Act to authorize certain programs and activities of the

government of the District of Columbia, and for other purposes, see Mayor's Order 99-73, May 4, 1999 (46 DCR 4391).

§ 44-707. Stipends for patients and certain resident employees.

The Mayor of the District of Columbia is authorized, pursuant to regulations prescribed by the Council of the District of Columbia, to provide for the payment of stipends to patients and residents employed in institutions of or under programs sponsored by the government of the District of Columbia as an aid to their rehabilitation or for training purposes. Nothing contained herein shall be construed as conferring employee status on any person covered by this section.

(Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 6.)

Prior Codifications. — 1981 Ed., § 32-126. 1973 Ed., § 32-333.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-708. Benefits in lieu of salary for certain workers in District facilities.

Notwithstanding any other provision of law, the Mayor of the District of Columbia is authorized to furnish, pursuant to regulations prescribed by the Council of the District of Columbia, subsistence, living quarters, and laundry in lieu of salary to persons authorized by the Mayor to work in facilities of the government of the District of Columbia for the purposes of securing training and experience in their future vocations.

(Oct. 26, 1973, 87 Stat. 505, Pub. L. 93-140, § 7; Mar. 3, 1979, D.C. Law 2-139, § 3205(dd), 25 DCR 5740.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Prior Codifications. — 1981 Ed., § 32-127. 1973 Ed., § 32-334.

Temporary Addition of Section. — For temporary (225 day) addition of sections, see §§ 2 to 6 of Emergency Financial Assistance for Hospitals Temporary Act of 1999 (D.C. Law 13-37, October 7, 1999, law notification 46 DCR 8701).

"Sec. 2. Definitions. For the purposes of this act, the term:

"(1) 'Catchment area' means the area served by a hospital that receives funds pursuant to this act.

"(2) 'Community hospital' or 'hospital' means

an entity which, through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities, provides medical services for all residents of its catchment area.

"(3) 'Medically underserved population' means the population of an area designated by the Mayor as an area with a shortage of personal health services or a population group designated by the Mayor as having a shortage of such services. Medically underserved areas will be designated by the Mayor and a list of those designated will be published in the District of Columbia Register from time to time, taking into consideration the following factors, among others:

"(A) Available health resources in relation to size of the area and its population, including appropriate ratios of primary care physicians in general or family practice, internal medicine, pediatrics, or obstetrics and gynecology to the population;

"(B) Health indices for the population of the area, such as infant mortality rate;

"(C) Economic factors affecting the population's access to health services, such as percentage of the population with incomes below the poverty level; and

"(D) Demographic factors affecting the population's need and demand for health services, such as percentage of the population age 65 and over.

"(5) 'Nonprofit,' as applied to any private agency, institution, or organization, means one which is a corporation or association, or is owned and operated by one or more corporations or associations, that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code, approved August 16, 1954 (68A Stat. 163, 26 U.S.C. § 501(c)(3), and no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Sec. 3. Mayoral authority.

"(a) The Mayor is hereby authorized to establish a Emergency Hospital Loan and Grant Fund and to make or contract to make publicly-financed low-interest loans to hospitals in medically underserved areas of the District for the operation of such hospital.

"(b) The Mayor is hereby authorized to guarantee loans to nonprofit hospitals that provide health services to medically underserved populations.

"(c) The Mayor is hereby authorized to provide grants to nonprofit hospitals that provide health services to medically underserved populations.

"(d) Such sums as may be necessary are authorized to be appropriated to carry out this section.

"(e) The Mayor shall submit the proposed grant, loan or loan guarantee to the Council. No proposed grant, loan or loan guarantee, authorized by this section, shall be made without the approval of the Council. The Council shall, within a 14-day period, approve or disapprove by resolution the proposed grant, loan or loan guarantee.

"Sec. 4. Basic qualifications.

"To qualify for assistance under this act, the Mayor shall ascertain that:

"(1) The hospital is nonprofit;

"(2) All services offered by the hospital are furnished in accordance with applicable Federal and District laws;

"(3) The hospital provides acute care inpatient medical services to a medically

underserved population in the District of Columbia;

"(4) The hospital is primarily engaged in providing acute care inpatient medical services;

"(5) The hospital has a debt service coverage ratio of less than 1:1;

"(6) The hospital and its staff are in compliance with applicable federal and District of Columbia laws and regulations;

"(7) The hospital is licensed pursuant to applicable laws; and

"(8) The staff of the hospital are licensed, certified, or registered in accordance with applicable laws.

"Sec. 5. Loan, grant, and loan guarantee provisions.

"(a) The principal amount of any loan or grant made or guaranteed by the Mayor under this act shall be disbursed to the hospital in accordance with an agreement entered into between the parties to the loan and approved by the Mayor.

"(b) The principal amount of each loan or loan guarantee, together with interest thereon, shall be repayable over a period of 20 years, beginning on the date of endorsement of the loan or loan guarantee by the Mayor. The Mayor may approve a shorter repayment period if he determines that a repayment period of less than 20 years is more appropriate to an entity's total financial plan.

"(c) As conditions to the loan the Mayor may require:

"(1) A reorganization plan, or business plan detailing steps for financial stability.

"(2) Full disclosure to appropriate District officials of financial statements, including statements of related affiliates and subsidiaries.

"(d) The principal amount of each loan, grant, or loan guarantee, together with interest thereon shall be repayable in accordance with a repayment schedule that is agreed upon by the parties to the loan or loan guarantee and approved by the Mayor before or at the time of endorsement of the loan or grant. Unless otherwise specifically authorized by the Mayor, each loan or grant made or guaranteed by the Mayor shall be repayable in substantially level combined installments of principal and interest to be paid at intervals not less frequently than annually, sufficient in amount to amortize the loan through the final year of the life of the loan. Principal repayment during the first 60 months of operation may be deferred with payment reauthorized over the remaining 15 years. Interest rate charged shall be comparable to the rate of interest on a 20 year treasury note, adjusted to provide for appropriate administrative charges.

"Sec. 6. Assistance in medically underserved areas for public use. All loans made by the Mayor and all money expended by the Mayor in

connection with the exercise of any power granted pursuant to this act are exercised for a public use."

Section 8 (b) of D.C. Law 13-37 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) addition of §§ 32-131 to 32-135, see §§ 2 to 6 of the Emergency Financial Assistance for Hospitals Emergency Act of 1999 (D.C. Act 13-95, June 15, 1999, 46 DCR 5636).

For temporary (90-day) authorization of hospital loans and grants, see § 2 of the Emergency Financial Assistance for Hospitals Emergency Act of 1999 (D.C. Act 13-95, June 15, 1999, 46 DCR 5636).

For temporary (90-day) addition of §§ 32-131 to 32-135, see §§ 2 to 6 of the Emergency Financial Assistance for Hospitals Congressional Review Emergency Act of 1999 (D.C. Act 13-140, September 28, 1999, 46 DCR 7968).

For temporary (90-day) authorization of hospital loans and grants, see § 2 of the Emergency Financial Assistance for Hospitals Congressional Review Emergency Act of 1999 (D.C. Act 13-140, September 28, 1999, 46 DCR 7968).

Legislative history of Law 2-139. — Law 2-139 was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-709. Mayor to visit, investigate and report on certain charitable institutions.

The Mayor of the District of Columbia is required to visit and investigate the management of all institutions of charity within the District which may be appropriated for out of the District revenues, in whole or in part, and shall require an itemized report of receipts and expenditures to be made to him, to be transmitted with his annual report to Congress, which report shall also include such recommendations as the Mayor may deem proper concerning the necessity for such institutions, together with a plan for their organization and management, and estimates of appropriations necessary for their maintenance.

(July 5, 1884, 23 Stat. 127, ch. 227, § 1.)

Cross references. — Public welfare supervision, board of public welfare, institutions supported by congressional appropriations, see § 4-111.

Prior Codifications. — 1981 Ed., § 32-1201.

1973 Ed., § 32-1001.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-710. Mayor authorized to visit, investigate and report on certain organizations.

The Mayor of the District of Columbia is authorized to visit, investigate the management of, and have a report of the receipts and expenditures of the Columbia Hospital for Women and Lying-in Asylum, the Children's Hospital, Saint Ann's Infant Asylum, National Association for Colored Women and Children, Women's Christian Association, Little Sisters of the Poor, and the German Orphan Asylum, so long as they respectively accept money appropriated by Congress for their aid.

(June 4, 1880, 21 Stat. 157, ch. 121, § 1.)

Cross references. — Public welfare supervision, board of public welfare, institutions supported by congressional appropriations, see § 4-111.

Prior Codifications. — 1981 Ed., § 32-1202.

1973 Ed., § 32-1002.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-711. Appropriations for charitable and reformatory institutions to be lien on property.

All sums of money appropriated and expended in aid of the purchase of real estate for charitable or reformatory institutions in the District of Columbia, or for buildings or for permanent improvements to buildings thereon, shall (subject to any trust deed, mortgage, or other security or encumbrance existing on such property at the time of its purchase, or created at the time of its purchase) be a lien upon such property, and in case of the dissolution of any such corporation owning such property, or in case of the disposal of such property, by such corporation, entitle the United States to reimbursement in proportion to any other contributions or funds used for such purposes; and the acceptance by any such corporation of any sum of money appropriated for the foregoing purposes shall be deemed an acceptance of and agreement to this provision.

(Mar. 3, 1893, 27 Stat. 552, ch. 199, § 1.)

Cross references. — Public land sales, see § 10-801 et seq.

Section references. — This section is referred to in § 44-573.

Prior Codifications. — 1981 Ed., § 32-1203.

1973 Ed., § 32-1003.

§ 44-712. Terms of Congressmen as trustees or directors of certain corporations or institutions.

In all cases where Members of Congress or Senators are appointed to represent Congress on any board of trustees or board of directors of any corporation or institution to which Congress makes any appropriation, the term of said Members or Senators, as such trustee or director, shall continue until the expiration of 2 months after the 1st meeting of the Congress chosen next after their appointment.

(Mar. 3, 1893, 27 Stat. 553, ch. 199, § 1.)

Prior Codifications. — 1981 Ed., § 32-1204. 1973 Ed., § 32-1004.

§ 44-713. Compensation of physicians to the poor.

The compensation of the physicians to the poor shall not exceed \$40 per month each.

(Feb. 25, 1885, 23 Stat. 314, ch. 145, § 1.)

Prior Codifications. — 1981 Ed., § 32-1205. 1973 Ed., § 32-1005.

§ 44-714. Conflicts of interest by directors or trustees of certain charitable institutions.

No member or members of any board or boards of trustees or directors of any charitable institution, organization or corporation in the District of Columbia, which is supported in whole or in part by appropriations made by Congress, shall engage in traffic with said institution, organization or corporation for financial gain, and any member or members of such board of trustees or directors who shall so engage in such traffic shall be deemed legally disqualified for service on said board or boards.

(June 11, 1896, 29 Stat. 410, ch. 419, § 1.)

Cross references. — Public welfare supervision, board of public welfare, institutions supported by congressional appropriations, see § 4-111. **Prior Codifications.** — 1981 Ed., § 32-1206. 1973 Ed., § 32-1007.

§ 44-715. Congressional policy as to appropriations to churches or religious entities.

It is hereby declared to be the policy of the government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia shall be paid to any church or religious

denomination, or to any institution or society which is under sectarian or ecclesiastical control.

(June 11, 1896, 29 Stat. 411, ch. 419, § 1; Mar. 3, 1897, 29 Stat. 683, ch. 387, § 1.)

Prior Codifications. — 1981 Ed., § 32-1207. 1973 Ed., § 32-1008.

CASE NOTES

Hospitals.

The appropriation by Congress of money to a hospital, as compensation for the treatment and cure of poor patients under a contract, does not constitute an appropriation to a religious society, in violation of the constitutional provision against laws respecting an establishment of religion, where the hospital is incorporated under an act of Congress, and its property is acquired in its own name and for its own

purposes, and its business managed in its own way, subject to no visitation, supervision, or control by any ecclesiastical authority whatever, although the members of the corporation may be also members of a church and of a monastic order or sisterhood of that church, conducting the hospital under its auspices. *Bradfield v. Roberts*, 20 S.Ct. 121, 1899 U.S. LEXIS 1565 (U.S. Dist. Col. 1899).

§ 44-716. Home for Aged and Infirm — Sale of surplus products.

The Mayor is authorized, under such regulations as the Council of the District of Columbia may prescribe, to sell the surplus products of the Home for the Aged and Infirm. All moneys derived from such sales shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia.

(June 5, 1920, 41 Stat. 865, ch. 234, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18.)

Prior Codifications. — 1981 Ed., § 32-1208.

1973 Ed., § 32-1009.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(256) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-717. Home for Aged and Infirm — Admission of pay patients.

Pay patients may be admitted to the Home for the Aged and Infirm for care and treatment at such rates and under such regulations as may be established by the Council of the District of Columbia, insofar as such admissions will not

interfere with admission of indigent patients; provided, however, that the rates shall not exceed the estimated per capita cost for the current year.

(June 14, 1950, 64 Stat. 212, ch. 235.)

Prior Codifications. — 1981 Ed., § 32-1209.

1973 Ed., § 32-1010.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(256) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Fees for Clinical Services and Asbestos Abatement.

§ 44-731. Fees for clinical services.

(a) A fee, based on rates to be established by the Mayor, shall be charged to each person who is not indigent for all clinical services provided at District of Columbia health clinics. The Mayor's authority to set such fees at D.C. General Hospital and for those services provided at the Ambulatory Health Care Administration community health clinics shall terminate on the date that the Board of Directors of the District of Columbia Health and Hospitals Public Benefit Corporation has its first meeting in accordance with § 44-1102.04(h) [repealed].

(b) The following clinical health services shall be provided by the Mayor at District of Columbia health clinics, including the outpatient clinic at the D.C. General Hospital, through contractual arrangements with private agencies or providers, or through other alternative arrangements:

(1) Screening services:

(A) Hypertension;

(B) Sickle cell anemia; and

(C) Asbestosis, cancer of the stomach, cancer of the colon, rectal cancer, and other diseases resulting from prolonged exposure to asbestos. Free screening services for these diseases shall be provided only to those persons who have been identified as having a high risk of asbestos related disease and who do not have any form of health insurance in accordance with recommendations of the Task Force on Asbestos Abatement and rules and regulations issued by the Mayor.

(2) Screening and treatment services:

(A) Drug addiction;

(B) Lead poisoning;

(C) Venereal disease;

(D) Tuberculosis outpatient care; and

(E) Forensic psychiatry.

(3) Immunization services:

(A) Communicable disease in adults and children; and

(B) Rabies in animals.

(c)(1) The Mayor may determine that certain services will be provided without charge to all patients, because such a policy is determined to be in the public interest on the basis of any of the following health factors:

(A) Threat of communicable disease;

(B) Danger to the public health; or

(C) Mortality and morbidity related to a specific disease.

(2) All clinical health services shall be provided, without charge, at District of Columbia health clinics, including the outpatient clinic at the D.C. General Hospital, to persons who are receiving assistance under subchapter VII of Chapter 2 of Title 4, and who do not receive assistance under Medicaid.

(d) At the beginning of each fiscal year, the Mayor shall cause to be published in the District of Columbia Register a list of those services, if any, rendered free of charge by city clinics and by the D.C. General Hospital in the public interest.

(e) For purposes of this subchapter, the term "clinical services" shall include all health services rendered by the District in an ambulatory setting, including mental health, alcoholism, and drug treatment services.

(Mar. 15, 1985, D.C. Law 5-173, § 2, 32 DCR 736; Apr. 9, 1997, D.C. Law 11-212, § 401, 43 DCR 4962.)

Section references. — This section is referred to in §§ 44-733 and 44-734.

Prior Codifications. — 1981 Ed., § 32-119.1.

Emergency legislation. — For temporary amendment of section, see § 401 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), § 401 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), § 401 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and see § 401 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 5-173. — Law 5-173, "Fees for Clinical Services and Asbestos

Abatement Act of 1984," was introduced in Council and assigned Bill No. 5-493, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-238 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-212. — Law 11-212, the "Health and Hospitals Public Benefit Corporation Act of 1996," was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became effective on April 9, 1997.

§ 44-732. Asbestos abatement — Task Force established.

(a) There is established a Task Force on Asbestos Abatement ("Task Force").

(b) The Task Force shall consist of 9 members appointed as follows:

(1) Two members shall be appointed by the Mayor to represent the interests of the District of Columbia government;

(2) Two members shall be appointed by the Board of Education to represent the interests of the District of Columbia Public Schools; and

(3) Five members shall be appointed by the Council, 3 of whom shall have experience in the field of occupational health and safety and who shall have demonstrated a knowledge of and interest in asbestos-related diseases.

(c) Members of the Task Force shall be appointed within 15 days (excluding Saturdays, Sundays, and holidays) of March 15, 1985, or within 15 days (excluding Saturdays, Sundays, and holidays) of November 29, 1984, whichever occurs first.

(d) Vacancies occurring upon the Task Force shall be filled in the same manner as original appointees as provided in subsection (b) of this section.

(e) Five members of the Task Force shall constitute a quorum.

(f) The Task Force shall study all matters relating to the presence and condition of asbestos in public buildings owned or leased by the District of Columbia and shall make recommendations to the Mayor and the Council within 120 days of November 29, 1984. The report shall outline an asbestos abatement program for the District and shall contain, but not be limited to, the following information:

(1) A list of all public buildings owned or leased by the District of Columbia which have been constructed with asbestos materials and which pose a threat to public health and safety, or a plan for identifying these buildings;

(2) A plan for identifying those individuals within the District of Columbia who have a high risk of asbestos-related diseases because of prolonged exposure to public buildings containing friable asbestos material;

(3) Draft legislation to regulate individuals who are in the business of removing or containing asbestos material;

(4) Projections on the cost of removal or containment of asbestos in public buildings and on the cost of providing screening services to persons who have been identified as having a high risk of asbestos-related disease; and

(5) Specific recommendations on action that may be taken by the Mayor and the Council to implement a prompt and thorough abatement program.

(g) The Task Force shall cease to exist 30 days after submission of the report required by subsection (f) of this section.

(Mar. 15, 1985, D.C. Law 5-173, § 3, 32 DCR 736; Apr. 20, 1999, D.C. Law 12-264, § 31, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 32-119.2.

Legislative history of Law 5-173. — For legislative history of D.C. Law 5-173, see Historical and Statutory Notes following § 44-731.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned

Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 44-733. Asbestos abatement — Rules and regulations.

The Mayor is authorized to issue rules and regulations, in accordance with recommendations of the Task Force, to carry out the purposes of this subchapter.

(Mar. 15, 1985, D.C. Law 5-173, § 4, 32 DCR 736.)

Prior Codifications. — 1981 Ed., § 32-119.3. legislative history of D.C. Law 5-173, see Historical and Statutory Notes following § 44-731.

Legislative history of Law 5-173. — For

§ 44-734. Asbestos abatement — Appropriations.

There may be appropriated out of revenues available to the District sums necessary to carry out the purposes of this subchapter.

(Mar. 15, 1985, D.C. Law 5-173, § 5, 32 DCR 736.)

Prior Codifications. — 1981 Ed., § 32-119.4. legislative history of D.C. Law 5-173, see Historical and Statutory Notes following § 44-731.

Legislative history of Law 5-173. — For

*Subchapter III. Conveyance of Property to Columbia Hospital.***§ 44-751. In general.**

Subject to the provisions of § 44-752 [repealed], the Administrator of General Services and the Commissioner of the District of Columbia are directed to convey, without monetary consideration, to the Columbia Hospital for Women and Lying-in Asylum, Washington, District of Columbia, a corporation created by the Act of June 1, 1866 (14 Stat. 55), all right, title, and interest of the United States and of the District of Columbia in and to those pieces or parcels of land in the District of Columbia, described as follows, together with all improvements thereon and appurtenances thereto:

(1) All that piece or parcel of land situate and lying in the City of Washington in the District of Columbia and known as part of square no. 25, as laid down and distinguished on the plat or plan of said City, as follows: Beginning at the southeast corner of said square and running thence north with 24th Street 231 feet and 7 inches; thence west 230 feet and 6 inches; thence north to M Street 231 feet and 10 inches; thence west with M Street 215 feet and 6 inches to 25th Street; thence south with 25th Street 263 feet and 5 inches; thence east 200 feet; thence south to L Street 200 feet; thence east with L Street 246 feet to the beginning; and being the property conveyed to the United States of America by deed dated October 17, 1876, from the Columbia Hospital for Women and Lying-in Asylum, recorded in liber 836, folio 159, of the land records of the District of Columbia; and

(2) All that piece or parcel of land situate and lying in the City of Washington in the District of Columbia on the northeast corner of L and 25th Streets Northwest, being a part of original square no. 25, as follows: Beginning at the southwest corner of said square and running thence east with the line

of said L Street 200 feet for a corner; thence north 200 feet for a corner; thence west 200 feet for a corner; and thence south 200 feet to the place of beginning; containing 40,000 square feet of ground, more or less, and being the property conveyed to the United States of America by deed dated July 6, 1872, from the Columbia Hospital for Women and Lying-in Asylum and Edward Maynard, recorded in liber 811, folio 481 of the land records of the District of Columbia.

(June 28, 1952, 66 Stat. 287, ch. 486, § 1; Apr. 20, 1999, D.C. Law 12-264, § 32, 46 DCR 2118.)

Section references. — This section is referred to in § 44-753.

Prior Codifications. — 1981 Ed., § 32-120. 1973 Ed., § 32-323.

Legislative history of Law 12-264. — For legislative history of D.C. Law 12-264, see Historical and Statutory Notes following § 44-732.

§ 44-752. Restriction on use. [Repealed].

Repealed.

(June 28, 1952, 66 Stat. 287, ch. 486, § 1; Aug. 5, 1997, 111 Stat. 786, Pub. L. 105-33, § 11716.)

Prior Codifications. — 1981 Ed., § 32-121. 1973 Ed., § 32-323.

§ 44-753. Creation of lien in favor of United States.

The provisions of the paragraph following the appropriation for the Washington Hospital for Foundlings in § 44-711, creating a lien in favor of the United States with respect to the appropriations referred to therein, shall also apply to the appropriations in the aggregate amount of \$50,000, granted in the Act of June 10, 1872 (17 Stat. 360), and in the Act of March 3, 1875 (18 Stat. 386), for the purchase by the United States of the property described in § 44-751, and the acceptance by the Columbia Hospital for Women and Lying-in Asylum of the conveyance of said property shall be deemed an acceptance of and agreement to this provision.

(June 28, 1952, 66 Stat. 288, ch. 486, § 3.)

Prior Codifications. — 1981 Ed., § 32-122. 1973 Ed., § 32-325.

Subchapter IV. Repealed Provisions.

§ 44-771. Private facilities — License required. [Repealed].

Repealed.

(Apr. 20, 1908, 35 Stat. 64, ch. 148, § 1; Mar. 9, 1983, D.C. Law 4-171, § 19(a), 29 DCR 5297; Feb. 24, 1984, D.C. Law 5-48, § 12(i), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-101. 1973 Ed., § 32-301.

Legislative history of Law 5-48. — Law 5-48 was introduced in Council and assigned

Bill No. 7-166, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively.

Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

§ 44-772. Private facilities — Enforcement of provisions and regulations; inspection. [Repealed].

Repealed.

(Apr. 20, 1908, 35 Stat. 64, ch. 148, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(i), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-102. 1973 Ed., § 32-302.

Legislative history of Law 5-48. — Law 5-48 was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

§ 44-773. Private facilities — Violations of provisions or regulations. [Repealed].

Repealed.

(Apr. 20, 1908, 35 Stat. 65, ch. 148, § 3; Feb. 24, 1984, D.C. Law 5-48, § 12(i), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-103. 1973 Ed., § 32-303.

Legislative history of Law 5-48. — Law 5-48 was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

§ 44-774. Private facilities — Council authorized to promulgate regulations. [Repealed].

Repealed.

(Apr. 20, 1908, 35 Stat. 65, ch. 148, § 4; Mar. 9, 1983, D.C. Law 4-171, § 19(b), 29 DCR 5297; Feb. 24, 1984, D.C. Law 5-48, § 12(i), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-104. 1973 Ed., § 32-304.

Legislative history of Law 5-48. — Law 5-48 was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

§ 44-775. Private facilities — Prosecutions. [Repealed].

Repealed.

(Apr. 20, 1908, 35 Stat. 65, ch. 148, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub.

L. 91-358, title I, § 155(a); Feb. 24, 1984, D.C. Law 5-48, § 12(i), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-105. 1973 Ed., § 32-305.

Legislative history of Law 5-48. — Law 5-48 was introduced in Council and assigned Bill No. 7-166, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

§ 44-776. Report of loss of privileges by health care providers. [Repealed].

Repealed.

(Apr. 6, 1977, D.C. Law 1-106, § 8, 23 DCR 8737; Feb. 24, 1984, D.C. Law 5-48, § 12(b), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-106. 1973 Ed., § 32-305a.

Legislative history of Law 5-48. — For

legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.

§ 44-777. Rules and regulations for Smallpox Hospital. [Repealed].

Repealed.

(June 8, 1896, 29 Stat. 281, ch. 373; Feb. 24, 1984, D.C. Law 5-48, § 12(k), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-107. 1973 Ed., § 32-306.

Legislative history of Law 5-48. — For

legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.

§ 44-778. Washington Asylum Hospital continued. [Repealed].

Repealed.

(June 29, 1922, 42 Stat. 702, ch. 249, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(h), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-108. 1973 Ed., § 32-307.

Legislative history of Law 5-48. — For

legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.

§ 44-779. Admission of pay patients to psychopathic ward of General Hospital. [Repealed].

Repealed.

(June 7, 1924, 43 Stat. 568, ch. 302, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(g), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-109. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
 1973 Ed., § 32-308.
Legislative history of Law 5-48. — For

§ 44-780. Admission of pay patients to contagious-disease ward of General Hospital. [Repealed].

Repealed.

(Apr. 14, 1932, 47 Stat. 79, ch. 98, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(f), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-110. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
 1973 Ed., § 32-309.
Legislative history of Law 5-48. — For

§ 44-781. Admission of pay patients to Glenn Dale Hospital. [Repealed].

Repealed.

(June 7, 1924, 43 Stat. 568, ch. 302, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(g), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-111. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
 1973 Ed., § 32-310.
Legislative history of Law 5-48. — For

§ 44-782. Children's Tuberculosis Sanatorium. [Repealed].

Repealed.

(June 23, 1936, 49 Stat. 1880, ch. 726, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(e), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-114. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
 1973 Ed., § 32-313.
Legislative history of Law 5-48. — For

§ 44-783. Receipt of contagious-disease cases by Providence and Garfield Memorial Hospitals. [Repealed].

Repealed.

(July 1, 1898, 30 Stat. 635, ch. 546; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(j), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-115. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
 1973 Ed., § 32-316.
Legislative history of Law 5-48. — For

§ 44-784. Charges for treatment of patients. [Repealed].

Repealed.

(July 3, 1945, 59 Stat. 366, ch. 263, title II, § 201; July 26, 1946, 60 Stat. 687, ch. 672, title II, § 201; July 8, 1947, 61 Stat. 265, ch. 210, title II, § 201.)

Prior Codifications. — 1981 Ed., § 32-117. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
1973 Ed., § 32-318a.
Legislative history of Law 5-48. — For

§ 44-785. Availability of appropriations. [Repealed].

Repealed.

(June 30, 1945, 59 Stat. 282, ch. 209, § 1; Feb. 24, 1984, D.C. Law 5-48, § 12(d), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 32-118. legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 44-771.
1973 Ed., § 32-321.
Legislative history of Law 5-48. — For

§ 44-786. Fees for clinical services; free services. [Repealed].

Repealed.

(July 9, 1946, 60 Stat. 511, ch. 544, § 1; June 15, 1977, D.C. Law 2-9, § 2, 24 DCR 1215; Sept. 28, 1977, D.C. Law 2-24, § 4, 24 DCR 3343; Mar. 16, 1982, D.C. Law 4-79, § 505, 29 DCR 126; Apr. 6, 1982, D.C. Law 4-101, §§ 2001, 2101(a) (12), 29 DCR 1060; June 22, 1983, D.C. Law 5-14, § 502, 30 DCR 2632; Mar. 15, 1985, D.C. Law 5-173, § 6, 32 DCR 736.)

Prior Codifications. — 1981 Ed., § 32-119. legislative history of D.C. Law 5-173, see Historical and Statutory Notes following § 44-731.
1973 Ed., § 32-322.
Legislative history of Law 5-173. — For

CHAPTER 8. MEDICAL RECORDS.

Sec.

44-801. Definitions.

44-802. Authority to transmit data or information.

44-803. Liability for peer review actions or recommendations.

Sec.

44-804. Confidentiality of identity in publications.

44-805. Use of peer review reports, records, or statements in judicial and administrative proceedings.

§ 44-801. Definitions.

For the purposes of this chapter, the term:

(1) "Group practice" means a collection of health professionals that provides health-care services.

(2) "Health-care facility or agency" means a facility, agency, or other organizational entity as defined in § 44-501, or the Fire and Emergency Medical Services Department to the extent that it is operating as a pre-hospital medical care provider.

(3) "Health professional" means a person required to be licensed or permitted to provide health-care services in the District of Columbia under Chapter 12 of Title 3. The term "health professional" also includes employees of the Fire and Emergency Medical Services Department who provide emergency medical services in accordance with approved medical protocols or under the direction of a physician licensed in accordance with Chapter 12 of Title 3.

(4) "Health professional association" means a membership organization of health professionals in the District of Columbia having as a purpose the maintenance of high professional standards within the profession practiced by its members.

(5) "Peer review" means the procedure by which health-care facilities and agencies, group practices, and health professional associations monitor, evaluate, and take actions to improve the delivery, quality, and efficiency of services within their respective facilities, agencies, and professions, including recommendations, consideration of recommendations, actions with regard thereto, and implementation of the actions. The term "peer review" includes, but is not limited to, the following:

(A) Matters affecting membership of a health professional on the staff of a health-care facility or agency;

(B) The grant, delineation, renewal, denial, modification, limitation, or suspension of clinical privileges to provide health-care services at a health-care facility or agency;

(C) Matters affecting employment and the terms of employment of a health professional by a health-care facility, agency, or group practice;

(D) Matters affecting membership and terms of membership in a health professional association, including decisions to suspend membership privileges, expel from membership, reprimand or censure a member, or other disciplinary actions;

(E) Review of the qualifications, activities, conduct, or performance of any health professional, including a grievance against a health professional;

(F) Review of the quality, efficiency, or utilization of services provided by a health professional, a health-care facility, agency, or group practice; and

(G) Review of a health professional's ability to perform, including allegations of mental or physical impairment, and imposition of programs of education, treatment, or rehabilitation, including monitoring and supervision, or conduct of programs of education.

(6) "Peer review body" means a committee, board, hearing panel or officer, reviewing panel or officer or governing board of a health-care facility or agency, group practice or health professional association that engages in peer review, the health-care facility, agency, group practice or health professional association which establishes or authorizes or is governed by it, and a director, officer, employee, or member of such an entity.

(7) "Primary health record" means the record of continuing care maintained by a health professional, group practice, or health-care facility or agency containing all diagnostic and therapeutic services rendered to an individual patient by that health professional, facility, or agency.

(Sept. 29, 1978, D.C. Law 2-112, § 2, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(a), 40 DCR 605; Apr. 15, 2008, D.C. Law 17-147, § 6, 55 DCR 2558.)

Prior Codifications. — 1981 Ed., § 32-501. 1973 Ed., § 32-361.

Effect of amendments. — D.C. Law 17-147, in par. (2), inserted "or the Fire and Emergency Medical Services Department to the extent that it is operating as a pre-hospital medical care provider"; and, in par. (3), added "The term 'health professional' also includes employees of the Fire and Emergency Medical Services Department who provide emergency medical services in accordance with approved medical protocols or under the direction of a physician licensed in accordance with Chapter 12 of Title 3."

Legislative history of Law 2-112. — Law 2-112 was introduced in Council and assigned Bill No. 2-233, which was referred to the Committee on the Judiciary with comments from the Committee on Human Resources and the Aging. The Bill was adopted on first, amended first, and second readings on May 30, 1978, June 13, 1978, and June 27, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-236 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-234. — Law 9-234 was introduced in Council and assigned Bill No. 9-355, which was referred to the Committee on the Judiciary and reassigned to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-365 and transmitted to both Houses of Congress for its review. D.C. Law 9-234 became effective on March 17, 1993.

Legislative history of Law 17-147. — Law 17-147, the "Emergency Medical Services Improvement Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-170 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-313 and transmitted to both Houses of Congress for its review. D.C. Law 17-147 became effective on April 15, 2008.

CASE NOTES

ANALYSIS

Attorney discipline.

In general.

Peer review.

Primary health record.

Review.

Attorney discipline.

In light of peer review privilege, hospital's

gathering of information and its resultant peer review findings did not thereby "admit" its physician's negligence for purposes of any future litigation; thus, hospital's counsel's argument to jury that evidence demonstrated that physician was not negligent did not violate rule of professional conduct precluding lawyers from making false statements of material fact to tribunal. D.C. Code 1981, § 32-501 et seq.;

Rules of Prof. Conduct, Rule 3.3(a)(1). *Jackson v. Scott*, 667 A.2d 1365, 1995 D.C. App. LEXIS 246 (1995).

In general.

Peer review privilege precluded medical malpractice plaintiff from impeaching defense expert with peer review report's summary concerning surgery that gave rise to action; plaintiffs did not assert that expert relied on report in any manner, but rather, they merely claimed that he failed to consider certain information it contained. D.C. Code 1981, § 32-501 et seq. *Jackson v. Scott*, 667 A.2d 1365, 1995 D.C. App. LEXIS 246 (1995).

Peer review privilege does not bar testimony by any witness about events forming basis of negligence action, and does not bar discovery and admission into evidence of any written or other materials generated outside peer review procedure; however, it does preclude discovery and admission of information created by peer review investigation itself. D.C. Code 1981, § 32-501 et seq. *Jackson v. Scott*, 667 A.2d 1365, 1995 D.C. App. LEXIS 246 (1995).

Peer review.

District of Columbia Code provision, excluding from discovery documents of medical peer review body, information provided to or obtained by peer review body, and identity of persons providing information to peer review body, did not support withholding of information regarding patient health and safety and efforts at improvement generally, not related to peer review, requested by physician challeng-

ing her termination as chair of emergency medicine department of university medical school and hospital. *Ervin v. Howard Univ.*, 445 F.Supp.2d 23, 2006 U.S. Dist. LEXIS 59134 (2006).

Primary health record.

Summary statement attached to peer review report that was critical of defendant physician was not "primary health record" within meaning of peer review privilege statute, and thus, statement was not discoverable in malpractice action against defendant, even if facts statement contained should have been reflected in hospital chart but were not; by definition, information not included in chart was not part of "record of continuing care," and thus fell outside exception for primary health record. D.C. Code 1981, § 32-501(7). *Jackson v. Scott*, 667 A.2d 1365, 1995 D.C. App. LEXIS 246 (1995).

Review.

Trial court order directing defendant hospital to disclose minutes, analysis, preliminary and final findings and reports of peer review committee that investigated surgical competence of defendant doctor in medical malpractice action was not appealable under exception to final order rule, even if waiting until final judgment to appeal would be futile because damage from disclosure of peer review committee proceedings would have been accomplished; hospital and doctor had not yet failed to comply with order and been found in contempt or subject to other sanctions. Civil Rule 37(b)(2). *Scott v. Jackson*, 596 A.2d 523, 1991 D.C. App. LEXIS 226 (1991).

§ 44-802. Authority to transmit data or information.

No person, health-care facility or agency, health professional association, or group practice providing any report, note, record, or other data or information, including advice, opinion, or testimony, to a peer review body shall be liable to any other person for damages or equitable relief by reason of providing such a report, note, record, or other data or information, unless the information provided was false and the person or entity providing the information knew the information was false.

(Sept. 29, 1978, D.C. Law 2-112, § 3, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(b), 40 DCR 605.)

Section references. — This section is referred to in § 44-805.

Prior Codifications. — 1981 Ed., § 32-502. 1973 Ed., § 32-362.

Legislative history of Law 2-112. — For

legislative history of D.C. Law 2-112, see Historical and Statutory Notes following § 44-801.

Legislative history of Law 9-234. — For legislative history of D.C. Law 9-234, see Historical and Statutory Notes following § 44-801.

§ 44-803. Liability for peer review actions or recommendations.

No peer review body or member thereof, or person acting as its staff, or who participates with or assists such a body or member, operating in the District of Columbia shall be liable to any person for damages or equitable relief by reason of conducting or taking peer review if the peer review was within the scope of the functions of the peer review body and if the peer review body or the member acted in the reasonable belief that the peer review was warranted by the facts known after reasonable effort to obtain the facts of the matter.

(Sept. 29, 1978, D.C. Law 2-112, § 4, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(c), 40 DCR 605.)

Prior Codifications. — 1981 Ed., § 32-503. 1973 Ed., § 32-363.

Legislative history of Law 2-112. — For legislative history of D.C. Law 2-112, see Historical and Statutory Notes following § 44-801.

Legislative history of Law 9-234. — For legislative history of D.C. Law 9-234, see Historical and Statutory Notes following § 44-801.

CASE NOTES

Disclosures to third persons.

In certain circumstances nontreating physicians called upon to investigate the competence of their professional colleagues cannot be compelled to disclose their analyses and reports to

third parties absent a showing of “extraordinary necessity”, and are immune from liability for actions taken in the course of their investigation. *Jackson v. Scott*, 118 WLR 1293 (Super. Ct. 1990).

§ 44-804. Confidentiality of identity in publications.

Any publication by any medical utilization review committee, peer review committee, medical staff committee or tissue review committee shall keep confidential the identity of any patient whose condition, care or treatment was a part thereof.

(Sept. 29, 1978, D.C. Law 2-112, § 5, 25 DCR 1471.)

Prior Codifications. — 1981 Ed., § 32-504. 1973 Ed., § 32-364.

Legislative history of Law 2-112. — For

legislative history of D.C. Law 2-112, see Historical and Statutory Notes following § 44-801.

§ 44-805. Use of peer review reports, records, or statements in judicial and administrative proceedings.

(a) Except as otherwise provided by this section:

(1) The files, records, findings, opinions, recommendations, evaluations, and reports of a peer review body, information provided to or obtained by a peer review body, the identity of persons providing information to a peer review body, and reports or information provided pursuant to § 44-802 or federal or other District of Columbia law shall be confidential and shall be neither discoverable nor admissible into evidence in any civil, criminal, legislative, or administrative proceeding. Nothing in this paragraph shall preclude use of

reports or information provided under § 44-802 or federal or other District of Columbia law by a board regulating a health profession or the Mayor in proceedings by the board or the Mayor.

(2) No person who participated in the proceedings of or provided information to a peer review body shall be compelled to testify or give discovery in any civil, criminal, legislative, or administrative proceeding relating to any matter presented or discussed at those proceedings, or any information provided to or obtained by any reports, records, opinion, evaluation, finding, or recommendation of the body or its members.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, a court may order a peer review body to provide information in a criminal proceeding in which a health professional is accused of a felony, if the court determines that disclosure is essential to protect the public interest and that the information being sought can be obtained from no other source. In determining whether disclosure is essential to protect the public interest, the court shall consider the seriousness of the offense with which the health professional is charged, the need for disclosure of the party seeking it, and the probative value of the information. If the court orders disclosure, the identity of any patient shall not be disclosed without the consent of the patient or his legal representative, and the information disclosed shall not be used except in the criminal proceeding.

(b) Notwithstanding subsection (a) of this section, primary health records and other information, documents, or records available from original sources shall not be deemed nondiscoverable or inadmissible merely because they are a part of the files, records, or reports of a peer review body.

(c) This section shall not affect the right of any health professional to discover or to have admitted into evidence the minutes and reports of a peer review body concerning the health professional for the limited purpose of adjudicating the appropriateness of an adverse action affecting the employment, membership, privileges, or association of the health professional by the peer review body.

(Sept. 29, 1978, D.C. Law 2-112, § 6, 25 DCR 1471; Mar. 17, 1993, D.C. Law 9-234, § 2(d), 40 DCR 605.)

Prior Codifications. — 1981 Ed., § 32-505.
1973 Ed., § 32-365.

Legislative history of Law 2-112. — For legislative history of D.C. Law 2-112, see Historical and Statutory Notes following § 44-801.

Legislative history of Law 9-234. — For legislative history of D.C. Law 9-234, see Historical and Statutory Notes following § 44-801.

CASE NOTES

ANALYSIS

Appealable orders.
Discovery.
Jurisdiction.
Summary reports.

Appealable orders.

Trial court order directing defendant hospital to disclose minutes, analysis, preliminary and final findings and reports of peer review com-

mittee that investigated surgical competence of defendant doctor in medical malpractice action was not appealable under exception to final order rule, even if waiting until final judgment to appeal would be futile because damage from disclosure of peer review committee proceedings would have been accomplished; hospital and doctor had not yet failed to comply with order and been found in contempt or subject to other sanctions. Civil Rule 37(b)(2). *Scott v.*

Jackson, 596 A.2d 523, 1991 D.C. App. LEXIS 226 (1991).

Discovery.

Medical malpractice plaintiff failed to show "extraordinary necessity," required under District of Columbia statute for order compelling hospital to produce for discovery minutes of morbidity and mortality conference committee hearing at which care and treatment rendered plaintiff was discussed; plaintiff asserted that she was under anesthesia and the only other witnesses to the events that occurred at the time were hospital employees; however, plaintiff did not contend she was unable to obtain expert opinions, and it appeared that she sought review committee findings, not out of necessity, but to confirm views already expressed to her by her own experts, to judge the strength of her expert's opinions or to uncover other medical and legal theories upon which to prosecute the case. D.C. Code 1981, § 32-505(a). *Spinks v. Children's Hospital Nat'l Medical Center*, 124 F.R.D. 9, 1989 U.S. Dist. LEXIS 1154 (1989).

Medical malpractice plaintiff was not entitled to production of minutes prepared by doctor for discussing case at hospital morbidity and mortality conference committee hearing, even though notes might be outside scope of statutory privilege for findings of medical review committees, in absence of showing of some compelling reason. D.C. Code 1981, § 32-505(a). *Spinks v. Children's Hospital Nat'l Medical Center*, 124 F.R.D. 9, 1989 U.S. Dist. LEXIS 1154 (1989).

Any error in exclusion of testimony regarding physicians' cafeteria meeting to discuss surgeon's performance during heart valve operation did not prejudice plaintiffs at medical malpractice trial, even if contents of meeting were not privileged under peer review statute, since trial court admitted testimony about every other conversation that physicians had had regarding surgeon's performance, so as to allow jury to properly consider the matter; jury was presented with testimony from multiple witnesses who repeatedly described physician's pre-trial view that surgeon had not placed valve properly, and cafeteria meeting did not involve any novel admissions or statements. *Stone v. Alexander*, 6 A.3d 847, 2010 D.C. App. LEXIS 604 (2010).

Private academy of science claiming confidentiality and opposing discovery of documents requested by aspirin manufacturer to defend products liability suit demonstrated potential harm to candid exchange of views as result of disclosure of documents, that reflected closed deliberation of committee concerning review of methodology of study on connection between aspirin and Reye Syndrome and which consisted of preliminary drafts of committee re-

ports and documents reflecting confidential internal deliberations of authoring and reviewing committees. Civil Rule 26(c). *Plough, Inc. v. National Academy of Sciences*, 530 A.2d 1152, 1987 D.C. App. LEXIS 423 (1987).

Aspirin manufacturer seeking discovery of documents prepared by private academy of sciences in connection with review of study on link between aspirin and Reye Syndrome, so that manufacturer could defend products liability action, demonstrated relevance, even if products liability plaintiffs did not intend to introduce the academy's report, but made only weak case for necessity of documents, which reflected closed deliberation of academy committee concerning its review of methodology and which consisted of preliminary drafts and of documents reflecting confidential internal deliberations of committees; manufacturer could use documents as basis for expert opinions or impeachment; and manufacturer could hire its own experts to evaluate study. Civil Rule 26(c). *Plough, Inc. v. National Academy of Sciences*, 530 A.2d 1152, 1987 D.C. App. LEXIS 423 (1987).

Plaintiffs made the showing of extraordinary necessity required by subsection (a) to overcome the privilege accorded the records of a peer review committee, and thus the court properly ordered the records disclosed. *Jackson v. Scott*, 118 WLR 1969 (Super. Ct. 1990).

In certain circumstances, nontreating physicians called upon to investigate the competence of their professional colleagues cannot be compelled to disclose their analyses and reports to third parties absent a showing of "extraordinary necessity", and are immune from liability for actions taken in the course of their investigation. *Jackson v. Scott*, 118 WLR 1969 (Super. Ct. 1990).

Jurisdiction.

Reports prepared by defendants, which were offered by plaintiffs in support of their proposed findings of fact, were not privileged, despite defendants' contention that the reports were prepared for the remedial purpose of identifying problems and improving agency services and procedures, and, as such, were akin to peer reports privileged under the District of Columbia Code; state statute did not supply rule of decision in action based on federal question jurisdiction. *Evans v. Williams*, 238 F.R.D. 1, 2006 U.S. Dist. LEXIS 61336 (2006).

Summary reports.

Summary statement attached to peer review report was not "information...available from original sources" within meaning of peer review privilege statute, and thus, it was not discoverable in medical malpractice action against surgeon of whom peer review report was critical, even though summary statement was provided

by person or persons who observed operation and reported observations to committee; "original sources" referred to facts and opinions contained in materials existing outside of peer review process and discoverable as such,

whereas summary statement owed its existence to peer review investigation. D.C. Code 1981, § 32-505(a)(1), (b). *Jackson v. Scott*, 667 A.2d 1365, 1995 D.C. App. LEXIS 246 (1995).

CHAPTER 9. MENTAL HEALTH SERVICES.

Subchapter I. District of Columbia Mental Health Services

Sec.

44-901. Findings and purposes.

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Subchapter II. Mental Health Services Client Enterprise Program

44-921. Establishment; expenses; revolving fund; audit.

44-922. Rules.

Subchapter I. District of Columbia Mental Health Services.

§ 44-901. Findings and purposes.

(a) The Congress makes the following findings:

(1) Governmentally administered mental health services in the District of Columbia are currently provided through 2 separate public entities, the federally administered Saint Elizabeths Hospital and the Mental Health Services Administration of the District of Columbia Department of Human Resources.

(2) The District of Columbia has a continuing responsibility to provide mental health services to its residents.

(3) The federal government, through its operation of a national mental health program at Saint Elizabeths Hospital, has for over 100 years assisted the District of Columbia in carrying out that responsibility.

(4) Since its establishment by Congress in 1855, Saint Elizabeths Hospital has developed into a respected national mental health hospital and study, training, and treatment center, providing a range of quality mental health and related services, including:

(A) Acute and chronic inpatient psychiatric care;

(B) Outpatient psychiatric and substance abuse clinical and related services;

(C) Federal court system forensic psychiatry referral, evaluation, and patient treatment services for prisoners, and for individuals awaiting trial or requiring post-trial or post-sentence psychiatric evaluation;

(D) Patient care and related services for designated classes of individuals entitled to mental health benefits under federal law, such as certain members and employees of the United States Armed Forces and the Foreign Service, and residents of American overseas dependencies;

(E) District of Columbia court system forensic psychiatry referral, evaluation, and patient treatment services for prisoners, and for individuals awaiting trial or requiring post-trial or post-sentence psychiatric evaluation;

(F) Programs for special populations such as the mentally ill deaf;

(G) Support for basic and applied clinical psychiatric research and related patient services conducted by the National Institute of Mental Health and other institutions; and

(H) Professional and paraprofessional training in the major mental health disciplines.

(5) The continuation of the range of services currently provided by federally administered Saint Elizabeths Hospital must be assured, as these services are integrally related to:

(A) The availability of adequate mental health services to District of Columbia residents, nonresidents who require mental health services while in the District of Columbia, individuals entitled to mental health services under federal law, and individuals referred by both federal and local court systems; and

(B) The Nation's capacity to increase our knowledge and understanding about mental illness and to facilitate and continue the development and broad availability of sound and modern methods and approaches for the treatment of mental illness.

(6) The assumption of all or selected functions, programs, and resources of Saint Elizabeths Hospital from the federal government by the District of Columbia, and the integration of those functions, resources, and programs into a comprehensive mental health care system administered solely by the District of Columbia, will improve the efficiency and effectiveness of the services currently provided through those 2 separate entities by shifting the primary focus of care to an integrated community-based system.

(7) Such assumption of all or selected functions, programs, and resources of Saint Elizabeths Hospital by the District of Columbia would further the principle of home rule for the District of Columbia.

(b) It is the intent of Congress that:

(1) The District of Columbia have in operation no later than October 1, 1991, an integrated coordinated mental health system in the District which provides:

(A) High quality, cost-effective, and community-based programs and facilities;

(B) A continuum of inpatient and outpatient mental health care, residential treatment, and support services through an appropriate balance of public and private resources; and

(C) Assurances that patient rights and medical needs are protected;

(2) The comprehensive District mental health care system be in full compliance with the federal court consent decree in *Dixon v. Heckler*;

(3) The District and federal governments bear equitable shares of the costs of a transition from the present system to a comprehensive District mental health system;

(4) The transition to a comprehensive District mental health system provided for by this subchapter be carried out with maximum consideration for the interests of employees of the Hospital and provide a right-of-first-refusal to such employees for employment at comparable levels in positions created under the system implementation plan;

(5) The federal government have the responsibility for the retraining of Hospital employees to prepare such employees for the requirements of employment in a comprehensive District mental health system;

(6) The federal government continue high quality mental health research, training, and demonstration programs at Saint Elizabeths Hospital;

(7) The District government establish and maintain accreditation and licensing standards for all services provided in District mental health facilities which assure quality care consistent with appropriate federal regulations and comparable with standards of the Joint Commission on Accreditation of Hospitals; and

(8) The comprehensive mental health system plan include a component for direct services for the homeless mentally ill.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 2; Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, § 3(a).)

Section references. — This section is referred to in §§ 44-904 and 44-907.

Prior Codifications. — 1981 Ed., § 32-621.

Effective date. — Section 11(a) of Pub. L. 98-621 provided that this subchapter is effective on October 1, 1985.

Delegation of Authority. — Delegation of Authority to Make Grants to Implement the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, Public Law 98-621, see Mayor's Order 92-64, May 19, 1992.

Editor's notes. — Transitional payment authorized: Public Law 101-518, 104 Stat. 2224, the District of Columbia Appropriations Act, 1991, provided for a federal contribution to the District of Columbia, as authorized by the Saint Elizabeth's Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (98 Stat. 3369; Public Law 98-621), \$15,000,000. Inpatient rate and operating costs: Section 101(d) of Pub. L. 99-591, the D.C. Appropriations Act, 1987, provided that the inpatient rate (excluding the proportionate share for repairs and construction) for services rendered by Saint Elizabeths Hospital for pa-

tient care shall be at the per diem rate established pursuant to § 2 of an Act to authorize certain expenditures from the appropriation of Saint Elizabeths Hospital, and for other purposes, approved August 4, 1947 (61 Stat. 751, Pub. L. 80-353; 24 U.S.C. § 168(a)); and provided further, that total funds paid by the District of Columbia as reimbursements for operating costs of Saint Elizabeths Hospital, including any District of Columbia payments (but excluding the federal matching share of payments) associated with title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; Pub. L. 89-97; 42 U.S.C. § 1396 et seq.), shall not exceed \$71,200,000. Preferred Alternative Use and Transfer of the Saint Elizabeths West Campus Emergency Resolution of 1993: Pursuant to Resolution 10-129, effective July 21, 1993, the Council concurred, on an emergency basis, with the Mayor's recommendation of the use and proposed transfer of the West Campus of Saint Elizabeths Hospital to the District of Columbia pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act.

CASE NOTES

Construction with other laws.

Mental Health Services Act did not implicitly supersede Certificate of Need Act governing the establishment of any new institutional health service, as there was no irreconcilable conflict between the two statutes and no clear legislative intention to repeal CONA; purpose of CONA was to ensure equitable distribution of health care facilities, with focus on particular

facility and participation, and participation of local community members in decision making process was contemplated, while MHSA required district to offer community based mental health facilities and implicitly determined that facilities were needed, with less emphasis on specific site. D.C. Code 1981, §§ 32-301 to 32-317, 32-621 to 32-628. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

§ 44-902. Definitions.

For the purpose of this subchapter:

(1) The term "Hospital" means the institution in the District of Columbia known as Saint Elizabeths Hospital operated on November 8, 1984, by the Secretary of Health and Human Services.

(2) The term "Secretary" means the Secretary of Health and Human Services.

(3) The term "Mayor" means the Mayor of the District of Columbia.

(4) The term "District" means the District of Columbia.

(5) The term "federal court consent decree" means the consent decree in *Dixon v. Heckler*, Civil Action No. 74-285.

(6) The term "service coordination period" means a period beginning on October 1, 1985, and terminating on October 1, 1987.

(7) The term "financial transition period" means a period beginning on October 1, 1985, and terminating on October 1, 1991.

(8) The term "system implementation plan" means the plan for a comprehensive mental health system for the District of Columbia to be developed pursuant to this subchapter.

(9) The term "Council" means the Council of the District of Columbia.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 3.)

Prior Codifications. — 1981 Ed., § 32-622. subchapter, see Historical and Statutory Notes
Effective date. — For effective date of this following § 44-901.

§ 44-903. Development of plan for mental health system for the District.

(a)(1) Subject to subsection (g) of this section and § 44-908(b)(1), effective October 1, 1987, the District shall be responsible for the provision of mental health services to residents of the District.

(2) Not later than October 1, 1993, the Mayor shall complete the implementation of the final system implementation plan reviewed by the Congress and the Council in accordance with the provisions of this subchapter for the establishment of a comprehensive District mental health system to provide mental health services and programs through community mental health facilities to individuals in the District of Columbia.

(b)(1) The Mayor shall prepare a preliminary system implementation plan for a comprehensive mental health system no later than 3 months from October 1, 1985, and a final implementation plan no later than 12 months from October 1, 1985.

(2) The Mayor shall submit the preliminary system implementation plan to the Council no later than 3 months from October 1, 1985. The Council shall review such plan and transmit written recommendations to the Mayor regarding any revisions to such plan no later than 60 days after such submission. The Mayor shall submit the revised preliminary plan to the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate for review and comment in accordance with the provisions of this subchapter.

(3) The final system implementation plan shall be considered by the Council consistent with the provisions of § 1-204.22(12).

(4) After the review of the Council pursuant to paragraph (3) of this subsection, the Mayor shall submit the final implementation plan to the

Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate for review and comment in accordance with the provisions of this subchapter.

(c) The system implementation plan shall:

(1) Propose and describe an integrated, comprehensive, and coordinated mental health system for the District of Columbia;

(2) Identify the types of treatment to be offered, staffing patterns, and the proposed sites for service delivery within the District of Columbia comprehensive mental health system;

(3) Identify mechanisms to attract and retain personnel of appropriate number and quality to meet the objectives of the comprehensive mental health system;

(4) Be in full compliance with the federal court consent decree in *Dixon v. Heckler* and all applicable District of Columbia statutes and court decrees;

(5) Identify those positions, programs, and functions at Saint Elizabeths Hospital which are proposed for assumption by the District, those facilities at Saint Elizabeths Hospital which are proposed for utilization by the District under a comprehensive District mental health system, and the staffing patterns and programs at community facilities to which the assumed functions are to be integrated;

(6) Identify any capital improvements to facilities at Saint Elizabeths Hospital and elsewhere in the District of Columbia proposed for delivery of mental health services, which are necessary for the safe and cost effective delivery of mental health services; and

(7) Identify the specific real property, buildings, improvements, and personal property to be transferred pursuant to § 44-907(a)(1) needed to provide mental health and other services provided by the Department of Human Services under the final system implementation plan.

(d)(1) The Mayor shall develop the system implementation plan in close consultation with officials of Saint Elizabeths Hospital, through working groups to be established by the Secretary and the Mayor for that purpose.

(2) The Mayor and the Secretary shall establish a labor-management advisory committee, requesting the participation of federal and District employee organizations affected by this subchapter, to make recommendations on the system implementation plan. The committee shall consider staffing patterns under a comprehensive District mental health care system, retention of Hospital employees under such system, federal retraining for such employees, and any other areas of concern related to the establishment of a comprehensive District system. In developing the system implementation plan the Mayor shall carefully consider the recommendations of the committee. Such advisory committee shall not be subject to the Federal Advisory Committee Act.

(3) The Mayor and such working groups shall, in developing the plan, solicit comments from the public, which shall include professional organizations, provider agencies and individuals, and mental health advocacy groups in the District of Columbia.

(e)(1) The Mayor and the Secretary may, during the service coordination period, by mutual agreement and consistent with the requirements of the system implementation plan direct the shift of selected program responsibilities and staff resources from Saint Elizabeths Hospital to the District. The Secretary may assign staff occupying positions in affected programs to work under the supervision of the District. The Mayor shall notify the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate in writing of any planned shift in program responsibilities or staff resources not less than 30 days prior to the implementation of such shift.

(2)(A) Except as provided in subparagraph (B) of this paragraph, after October 1, 1984, and during the service coordination period, no request for proposals may be issued by the Secretary for any areas of commercial activity at the Hospital pursuant to Office of Management and Budget circular A-76.

(B) The limitation under subparagraph (A) of this paragraph shall not apply to studies initiated pursuant to such circular prior to October 1, 1984.

(f)(1) To assist the Mayor in the development of the system implementation plan, the Secretary shall contract for a financial audit and a physical plant audit of all existing facilities at the hospital to be completed by January 1, 1986. The financial audit shall be conducted according to generally accepted accounting principles. The physical plant audit shall recognize any relevant national and District codes and estimate the useful life of existing facility support systems.

(2)(A) Pursuant to such physical plant audit, the Secretary shall initiate not later than October 1, 1987, and, except as provided under an agreement entered into pursuant to subparagraph (C) of this paragraph, complete not later than October 1, 1993, such repairs and renovations to such physical plant and facility support systems of the hospital as are to be utilized by the District under the system implementation plan as part of a comprehensive District mental health system, as are necessary to meet any applicable code requirements or standards.

(B) At a minimum until October 1, 1987, the Secretary shall maintain all other facilities and infrastructure of the hospital not assumed by the District in the condition described in such audit.

(C) The Secretary may enter into an agreement with the Mayor under which the Secretary shall provide funds to the Mayor to complete the repairs and renovations described in subparagraph (A) of this paragraph and to make other capital improvements that are necessary for the safe and cost effective delivery of mental health services in the District, except that \$7,500,000 of the funds provided to the Mayor under such an agreement shall be used to make capital improvements to facilities not located at Saint Elizabeths Hospital. Of the \$7,500,000 provided for improvements to facilities not located at the Hospital, not less than \$5,000,000 shall be used to make capital improvements to housing facilities for seriously and chronically mentally ill individuals.

(g) During the service coordination period, the District of Columbia and the Secretary, to the extent provided in the federal court consent decree, shall be jointly responsible for providing citizens with the full range and scope of

mental health services set forth in such decree and the system implementation plan. No provision of this subchapter or any action or agreement during the service coordination period may be so construed as to absolve or relieve the District or the federal government of their joint or respective responsibilities to implement fully the mandates of the federal court consent decree.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 4; Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, §§ 2, 3(a).)

Section references. — This section is referred to in §§ 44-904, 44-907, and 44-908.

Prior Codifications. — 1981 Ed., § 32-623.

Effective date. — For effective date of this subchapter, see Historical and Statutory Notes following § 44-901.

References in text. — The Federal Advisory Committee Act, referred to at the end of subsection (d)(2), appears as Appendix 2 of Title 5 of the United States Code.

Delegation of Authority. — Delegation of authority under Public Law 98-621, see Mayor's Order 85-162, September 26, 1985.

Mayor's Orders. — Mental Health System

Reorganization Office established: See Mayor's Order 84-196, November 1, 1984.

Editor's notes. — Council recommendations on preliminary system implementation plan: Pursuant to Resolution 6-566, the "Preliminary System Implementation Plan for a Comprehensive District Mental Health System Recommendation Resolution of 1986," effective February 25, 1986, the Council expressed its recommendations regarding revisions to the preliminary system implementation plan for a comprehensive District mental health system proposed by the Mayor.

CASE NOTES

Construction of related laws.

Mental Health Services Act did not implicitly supersede Certificate of Need Act governing the establishment of any new institutional health service, as there was no irreconcilable conflict between the two statutes and no clear legislative intention to repeal CONA; purpose of CONA was to ensure equitable distribution of health care facilities, with focus on particular facility and participation, and participation of local community members in decision making process was contemplated, while MHSA re-

quired district to offer community based mental health facilities and implicitly determined that facilities were needed, with less emphasis on specific site. D.C. Code 1981, §§ 32-301 to 32-317, 32-621 to 32-628. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's liberty. D.C. Code 1981, §§ 21-501 to 21-592. In *re Reed*, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

§ 44-904. Congressional review of system implementation plan.

(a) The Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate shall review the preliminary system implementation plan transmitted by the Mayor pursuant to § 44-903 to determine the extent of its compliance with the provisions of § 44-901(b) and § 44-903, and transmit written recommendations regarding any revisions to the preliminary plan to the Mayor not later than 60 days after receipt of such plan.

(b) The Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate shall, within 90 days of submission of the final system implementation plan by the Mayor pursuant to § 44-903,

review such plan to determine the extent to which it is in compliance with the provisions of § 44-901(b) and § 44-903.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 5.)

Prior Codifications. — 1981 Ed., § 32-624.
Effective date. — For effective date of this

subchapter, see Historical and Statutory Notes following § 44-2901.

CASE NOTES

Construction of related laws.

Mental Health Services Act did not implicitly supersede Certificate of Need Act governing the establishment of any new institutional health service, as there was no irreconcilable conflict between the two statutes and no clear legislative intention to repeal CONA; purpose of CONA was to ensure equitable distribution of health care facilities, with focus on particular

facility and participation, and participation of local community members in decision making process was contemplated, while MHSA required district to offer community based mental health facilities and implicitly determined that facilities were needed, with less emphasis on specific site. D.C. Code 1981, §§ 32-301 to 32-317, 32-621 to 32-628. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

§ 44-905. Transition provisions for employees of the Hospital.

(a) Employees of the Hospital directly affected by the assumption of programs and functions by the District government who meet the requirements for immediate retirement under the provisions of § 8336(d) of Title 5, United States Code, shall be accorded the opportunity to retire during the 30-day period prior to the assumption of such programs and functions.

(b)(1) The system implementation plan shall prescribe the specific number and types of positions needed by the District government at the end of the service coordination period.

(2) Notwithstanding § 3503 of Title 5, United States Code, employees of the hospital shall only be transferred to District employment under the provisions of this section.

(c)(1) While on the retention list or the District or federal agency reemployment priority list, the system implementation plan shall provide to Hospital employees a right-of-first-refusal to District employment in positions for which such employees may qualify, (A) created under the system implementation plan in the comprehensive District mental health system, (B) available under the Department of Human Services of the District, and (C) available at the District of Columbia General Hospital.

(2) In accordance with federal regulations, the Secretary shall establish retention registers of hospital employees and provide such retention registers to the District government. Employment in positions identified in the system implementation plan under subsection (b) of this section shall be offered to hospital employees by the District government according to each such employee's relative standing on the retention registers.

(3) Employee appeals concerning the retention registers established by the Secretary shall be in accordance with federal regulations.

(4) Employee appeals concerning employment offers by the District shall be in accordance with Chapter 6 of Title 1.

(d)(1) Notwithstanding any other provision of law, employees of the Hospital, while on the federal agency reemployment priority list, shall have a right-of-first-refusal to employment in comparable available positions for which they qualify within the Department of Health and Human Services in the Washington metropolitan area.

(2) If necessary to separate employees of the hospital from federal employment, such employees may be separated only under federal reduction-in-force procedures.

(3) A federal agency reemployment priority list and a displaced employees program shall be maintained for employees of the hospital by the Secretary and the Office of Personnel Management in accordance with federal regulations for federal employees separated by reduction-in-force procedures.

(4) The Mayor shall create and maintain, in consultation with the Secretary, a District agency reemployment priority list of those employees of the Hospital on the retention registers who are not offered employment under subsection (c) of this section. Individuals who refuse an offer of employment under subsection (c) of this section shall be ineligible for inclusion on the District agency reemployment priority list. Such reemployment priority list shall be administered in accordance with procedures established pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

(5) Acceptance of nontemporary employment as a result of referral from any retention list or agency reemployment priority list shall automatically terminate an individual's severance pay as of the effective date of such employment.

(e) Any contract entered into by the District of Columbia for the provision of mental health services formerly provided by or at the hospital shall require the contractor or provider, in filling new positions created to perform under the contract, to give preference to qualified candidates on the District agency reemployment priority list created pursuant to subsection (d) of this section. An individual who is offered nontemporary employment with a contractor shall have his or her name remain on the District agency reemployment priority list under subsection (d) of this section for not more than 24 months from the date of acceptance of such employment.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 6.)

Section references. — This section is referred to in § 44-906.

Prior Codifications. — 1981 Ed., § 32-625.

Effective date. — For effective date of this subchapter, see Historical and Statutory Notes following § 44-901.

§ 44-906. Conditions of employment for former employees of the Hospital.

(a) Each individual accepting employment without a break in service with the District government pursuant to § 44-905 shall:

(1) Except as specifically provided in this subchapter, be required to meet all District qualifications other than licensure requirements for appointment required of other candidates, and shall become District employees in the

comparable District service subject to the provisions of Chapter 6 of Title 1, and all other statutes and regulations governing District personnel;

(2) Meet all licensure requirements within 27 months of appointment by the District government or shall be issued a limited license subject to the provisions, limitations, conditions, or restrictions that shall be determined by the appropriate board or commission. The limited license shall not exceed the term of employment with the Commission on Mental Health Services;

(3) Notwithstanding Chapter 63 of Title 5, United States Code, transfer accrued annual and sick leave balances pursuant to subchapter XII of Chapter 6 of Title 1;

(4) Have the grade and rate of pay determined in accordance with regulations established pursuant to subchapter XI of Chapter 6 of Title 1, except that no employee shall suffer a loss in the basic rate of pay or in seniority;

(5) If applicable, retain a rate of pay including the physician's comparability allowance under the provisions of § 5948 of Title 5, United States Code, and continue to receive such allowance under the terms of the then prevailing agreement until its expiration or for a period of 2 years from the date of appointment by the District government, whichever occurs later;

(6) Be entitled to the same health and life insurance benefits as are available to District employees in the applicable service;

(7) If employed by the federal government before January 1, 1984, continue to be covered by the United States Civil Service Retirement System, under Chapter 83 of Title 5, United States Code, to the same extent that such retirement system covers District government employees; and

(8) If employed by the federal government on or after January 1, 1984, be subject to the retirement system applicable to District government employees pursuant to subchapter XXVI, Retirement, of Chapter 6 of Title 1.

(b) An individual appointed to a position in the District government without a break in service, from the retention list, or from the District or federal agency reemployment priority lists, shall be exempt from the residency requirements of subchapter VIII of Chapter 6 of Title 1.

(c) An individual receiving compensation for work injuries pursuant to Chapter 81 of Title 5, United States Code, shall:

(1) Continue to have the claims adjudicated and the related costs paid by the federal government until such individual recovers and returns to duty;

(2) If medically recovered and returned to duty, have any subsequent claim for the recurrence of the disability determined and paid under the provisions of subchapter XXIII of Chapter 6 of Title 1.

(d) The District government may initiate or continue an action against an individual who accepts employment under § 44-905(c) for cause related to events that occur prior to the end of the service coordination period. Any such action shall be conducted in accordance with such federal laws and regulations under which action would have been conducted had the assumption of function by the District not occurred.

(e) Commissioned public health service officers detailed to the District of Columbia mental health system shall not be considered employees for pur-

poses of any full-time employee equivalency total of the Department of Health and Human Services.

(f) For purposes of this section, Hospital employees shall include former patient employees occupying career positions at the Hospital.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 7; June 8, 1989, D.C. Law 8-7, § 2, 36 DCR 2847; Oct. 18, 1989, D.C. Law 8-40, §)

Prior Codifications. — 1981 Ed., § 32-626.

Legislative history of Law 8-7. — Law 8-7 was introduced in Council and assigned Bill No. 8-223. The Bill was adopted on first and second readings on March 21, 1989 and April 4, 1989, respectively. Signed by the Mayor on April 17, 1989, it was assigned Act No. 8-23 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-40. — Law 8-40 was introduced in Council and assigned Bill No. 8-104, which was referred to the Committee on Human Services. The Bill was ad-

opted on first and second readings on June 27, 1989 and July 11, 1989, respectively. Signed by the Mayor on July 27, 1989, it was assigned Act No. 8-69 and transmitted to both Houses of Congress for its review.

Effective date. — For effective date of this subchapter, see Historical and Statutory Notes following § 44-901.

References in text. — The District of Columbia Government Comprehensive Merit Personnel Act of 1978, referred to throughout this section, is D.C. Law 2-139.

CASE NOTES

Physicians.

Board of Medicine was required to explain more fully suggested inconsistency in Board's treatment of applications for licensure by endorsement or reciprocity from those applicants licensed by states requiring FLEX examinations and those licensed by states not requiring FLEX examinations in light of evidence that Board required strict equivalency in case of psychiatrist from FLEX state but accepted carte blanche applicant licensed in non-FLEX state; failure by Board to review non-FLEX state-constructed examinations to determine their substantial equivalency to FLEX exam while requiring strict equivalency in case of applicants from FLEX states, as general practice, would import unacceptable degree of arbitrariness into Board's administration of en-

dorsement and reciprocity provisions. D.C. Code 1981, §§ 2-3305.6(e), 2-3305.7. *Roberts v. District of Columbia Bd. of Medicine*, 577 A.2d 319, 1990 D.C. App. LEXIS 157 (1990).

Psychiatrist, who was licensed in Michigan and who applied for license in District of Columbia based on reciprocity or endorsement, had no vested interest in practice in District of Columbia, and thus, had no constitutionally protected interest in licensure in District which entitled her to more searching review of her qualifications beyond her federation-certified score from FLEX examination which she took in Michigan in 1970. D.C. Code 1981, §§ 2-3301.1 to 2-3312.1, 2-3305.6(e)(1), 2-3305.7(1); U.S.C. Const. Amend. 5. *Roberts v. District of Columbia Bd. of Medicine*, 577 A.2d 319, 1990 D.C. App. LEXIS 157 (1990).

§ 44-907. Property transfer.

(a)(1) Except as provided in paragraph (2) of this subsection, on October 1, 1987, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States in all real property at Saint Elizabeths Hospital in the District of Columbia together with any buildings, improvements, and personal property used in connection with such property needed to provide mental health and other services provided by the Department of Human Services identified pursuant to § 44-903(c)(7).

(2) Such real property as is identified by the Secretary by September 30, 1987, as necessary to federal mental health programs at Saint Elizabeths Hospital under § 44-901(b)(6) shall not be transferred under this subsection.

(b) On or before October 1, 1992, the Mayor shall prepare, and submit to the Committee on the District of Columbia of the House of Representatives and the

Committees on Governmental Affairs and Labor and Human Resources of the Senate, a master plan, not inconsistent with the comprehensive plan for the National Capital, for the use of all real property, buildings, improvements, and personal property comprising Saint Elizabeths Hospital in the District of Columbia not transferred or excluded pursuant to subsection (a) of this section. In developing such plan, the Mayor shall consult with, and provide an opportunity for review by, appropriate federal, regional, and local agencies. Such master plan submitted by the Mayor shall be approved by a law enacted by the Congress within the 2-year period following the date such plan is submitted to the Committee on the District of Columbia of the House of Representatives and the Committees on Governmental Affairs and Labor and Human Resources of the Senate. Immediately upon the approval of any such law, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States in and to such property in accordance with such approved plan. The real property, together with the buildings and other improvements thereon, including personal property used in connection therewith, known as the Oxon Cove Park and operated by the National Park Service, Department of the Interior, shall not be transferred under this chapter.

(c) On October 1, 1985, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States to lot 87, square 622, in the subdivision made by the District of Columbia Redevelopment Land Agency, as per plat recorded in the Office of the Surveyor for the District of Columbia, in liber 154 at folio 149 (901 First Street N.W., the J.B. Johnson Building and grounds).

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 8; Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, § 3(b).)

Cross references. — Economic development zone incentives, creation, see § 6-1501.

Section references. — This section is referred to in § 44-903.

Prior Codifications. — 1981 Ed., § 32-627.

Effective date. — For effective date of this subchapter, see Historical and Statutory Notes following § 44-901.

§ 44-908. Financing provisions.

(a) There are authorized to be appropriated for grants by the Secretary of Health and Human Services to the District of Columbia comprehensive mental health system, \$30,000,000 for fiscal year 1988, \$24,000,000 for fiscal year 1989, \$18,000,000 for fiscal year 1990, and \$12,000,000 for fiscal year 1991.

(b)(1) Beginning on October 1, 1987, and in each subsequent fiscal year, the appropriate federal agency is directed to pay the District of Columbia the full costs for the provision of mental health diagnostic and treatment services for the following types of patients:

(A) Any individual referred to the system pursuant to a federal statute or by a responsible federal agency;

(B) Any individual referred to the system for emergency detention or involuntary commitment after being taken into custody:

(i) As a direct result of the individual's action or threat of action against a federal official;

(ii) As a direct result of the individual's action or threat of action on the grounds of the White House or of the Capitol; or

(iii) Under Chapter 9 of Title 21 of the District of Columbia Official Code;

(C) Any individual referred to the system as a result of a criminal proceeding in a federal court (including an individual admitted for treatment, observation, and diagnosis and an individual found incompetent to stand trial or found not guilty by reason of insanity). The preceding provisions of this paragraph apply to any individual referred to the system (or to Saint Elizabeths Hospital) before or after November 8, 1984.

(2) The responsibility of the United States for the cost of services for individuals described in paragraph (1) of this subsection shall not affect the treatment responsibilities to the District of Columbia under the Interstate Compact on Mental Health.

(c) During the service coordination and the financial transition periods, the District of Columbia shall gradually assume a greater share of the financial responsibility for the provision of mental health services provided by the system to individuals not described in subsection (b) of this section.

(d) Subject to § 44-903(f)(2), capital improvements to facilities at Saint Elizabeths Hospital authorized during the service coordination period shall be the shared responsibility of the District and the federal government in accordance with Public Law 83-472.

(e) Pursuant to the financial audit under § 44-903(f), any unassigned liabilities of the Hospital shall be assumed by and shall be the sole responsibility of the federal government.

(f)(1) After the service coordination period, the Secretary shall conduct an audit, under generally accepted accounting procedures, to identify the liability of the federal government for accrued annual leave balances for those employees assumed by the District under the system implementation plan.

(2) There is authorized to be appropriated for payment by the federal government to the District an amount equal to the liability identified by such audit.

(g) Nothing in this subchapter shall affect the authority of the District of Columbia under any other statute to collect costs billed by the District of Columbia for mental health services, except that payment for the same costs may not be collected from more than one party.

(h) The government of the United States shall be solely responsible for:

(1) All claims and causes of action against Saint Elizabeths Hospital that accrue before October 1, 1987, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before October 1, 1987, and the United States shall not compromise or settle any claim resulting in District liability without the consent of the District, which consent shall not be unreasonably withheld; and

(2) All claims that result in a judgment or award against Saint Elizabeths Hospital before October 1, 1987.

(Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 9(a)-(c)(1), (d)-(h).)

Section references. — This section is referred to in § 44-903.

Effective date. — For effective date of this subchapter, see Historical and Statutory Notes following § 44-901.

Prior Codifications. — 1981 Ed., § 32-628.

§ 44-909. Buy American provisions.

(a) *Generally.* — The Mayor shall insure that the requirements of the Buy American Act of 1933, as amended, apply to all procurements made under this subchapter.

(b) *Determination by the Mayor.* —

(1) If the Mayor, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) of this subsection has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the United States Trade Representative shall rescind the waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) of this subsection is any agreement, between the United States and a foreign country pursuant to which the head of an agency of the United States Government has waived the requirements of the Buy American Act with respect to certain products produced in the foreign country.

(c) *Report to Congress.* — The Mayor shall submit to Congress a report on the amount of purchases from foreign entities under this subchapter from foreign entities in fiscal years 1992 and 1993. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (b)(2) of this section, the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(d) *Buy American Act defined.* — For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

(e) *Restrictions on contract awards.* — No contract or subcontract made with funds authorized under this subchapter may be awarded for the procurement of an article, material, or supply produced or manufactured in a foreign country whose government unfairly maintains in government procurement a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses, as identified by the President pursuant to (g)(1)(A) of section 305 of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)). Any such determination shall be made in accordance with section 305 [of such act].

(f) *Prohibition against fraudulent use of “Made in America” labels.* — If it has been finally determined by a court or Federal agency that any person

intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract under this subchapter, pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(Oct. 31, 1991, 105 Stat. 980, Pub. L. 102-150, § 4.)

Prior Codifications. — 1981 Ed., § 32-629.

Subchapter II. Mental Health Services Client Enterprise Program.

§ 44-921. Establishment; expenses; revolving fund; audit.

(a) The Mayor is authorized to establish an enterprise program at St. Elizabeths Hospital to promote the rehabilitation and employment of clients of the Department of Mental Health with the intended purpose of assisting clients of the Department of Mental Health to acquire community work skills in preparation for independent living.

(b) Purchases and sales of merchandise which may be made by clients and the payment of any wages to clients or any other expenses of the program may be paid from funds derived from the day to day operation of the enterprise program but shall not be subject to Unit A of Chapter 3 of Title 2.

(c) The Mayor, or during a control year as defined in § 47-393, the Mayor or the Chief Financial Officer, is authorized to establish a revolving fund to be used for the collection and disbursement of funds for any enterprise program established pursuant to this subchapter and shall supervise all collections and disbursements from the fund for the purposes set forth in this subchapter.

(d) Repealed.

(Apr. 13, 1999, D.C. Law 12-226, § 2, 46 DCR 500; Dec. 18, 2001, D.C. Law 14-56, § 116(j), 48 DCR 7674; Dec. 7, 2004, D.C. Law 15-205, § 1192(e), 51 DCR 8441.)

Prior Codifications. — 1981 Ed., § 32-631.

Effect of amendments. — D.C. Law 14-56, in subsec. (a), substituted "Department of Mental Health" for "Commission on Mental Health Services".

D.C. Law 15-205 repealed subsec. (d) which had read as follows: "(d) Any business operations conducted pursuant to this subchapter shall be subject to the oversight of the District of Columbia Auditor pursuant to § 1-204.55."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(j) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, November 3, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(j) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(j) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(j) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of sec-

tion, see § 1192(e) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1192(e) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 12-226. — Law 12-226, the “Mental Health Services Client Enterprise Establishment Act of 1998,” was introduced in Council and assigned Bill No. 12-593, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 11, 1998, it

was assigned Act No. 12-547 and transmitted to both Houses of Congress for its review. D.C. Law 12-226 became effective on April 13, 1999.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 44-401.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

§ 44-922. Rules.

The Mayor may issue rules to implement the provisions of this subchapter in accordance with subchapter I of Chapter 5 of Title 2.

(Apr. 13, 1999, D.C. Law 12-226, § 3, 46 DCR 500.)

Prior Codifications. — 1981 Ed., § 32-632.
Legislative history of Law 12-226. — For

legislative history of D.C. Law 12-226, see Historical and Statutory Notes following § 44-901.

CHAPTER 9A. NOT-FOR-PROFIT HOSPITAL CORPORATION.

Sec.	Sec.
44-951.01. Definitions.	44-951.11. Procurement law inapplicable.
44-951.02. Establishment of the Not-for-Profit Hospital Corporation.	44-951.12. Exemption from taxation.
44-951.03. Not-for-Profit Hospital Corporation Fund.	44-951.13. Reports to the Mayor and the Council.
44-951.04. Board of Directors.	44-951.14. Representation and indemnification.
44-951.05. Governance of the Corporation.	44-951.15. General Counsel.
44-951.06. Powers of the Corporation.	44-951.16. Debts and borrowing.
44-951.07. Transfer of assets under Deed of Trust.	44-951.17. Continuation of privileges to practice.
44-951.08. Personnel administration.	44-951.18. Authority of the Chief Financial Officer.
44-951.09. Budget.	
44-951.10. Transfer of employees.	

§ 44-951.01. Definitions.

For the purposes of this chapter, the term:

(1) “Board” means the Board of Directors of the Not-for-Profit Hospital Corporation.

(2) “Corporation” means the Not-for-Profit Hospital Corporation established by § 44-951.02.

(3) “Fund” means the Not-for-Profit Hospital Corporation Fund established by § 44-951.03.

(4) “Hospital” means:

(A) The acute care hospital on the site;

(B) The hospital building on the site;

(C) All furnishings, fixtures, equipment, supplies, and related amenities located in the acute care hospital and the hospital building; and

(D) Any other operations located within the hospital building or on the site, and contracts, leases, or other agreements related to those operations.

(5) “Site” means the land comprised of approximately 17 acres at 1310 and 1350 Southern Avenue, S.E.

(Sept. 14, 2011, D.C. Law 19-21, § 5112, 58 DCR 6226.)

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was

assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 5111 of D.C. Law 19-21 provided that subtitle L of title V of the act may be cited as “Not-for-Profit Hospital Corporation Establishment Amendment Act of 2011”.

§ 44-951.02. Establishment of the Not-for-Profit Hospital Corporation.

(a) There is established as an instrumentality of the District government the Not-for-Profit Hospital Corporation, which shall have a separate legal existence within the District government.

(b) The primary purpose of the Corporation shall be to:

(1) Receive the land, improvements on the land, equipment, and other assets of the United Medical Center;

(2) Operate and take all actions to ensure the continued operation of the hospital; and

(3) Sell or otherwise transfer all or part of the hospital and site, if a qualified buyer is identified.

(Sept. 14, 2011, D.C. Law 19-21, § 5113, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.03. Not-for-Profit Hospital Corporation Fund.

(a)(1) There is established as a nonlapsing fund the Not-for-Profit Hospital Corporation Fund. The Fund shall be comprised of:

(A) Accounts receivable of the Corporation;

(B) Transferred funds of the United Medical Center; and

(C) Funds obtained through payments from third-party payers, and other sources.

(2) The Mayor may direct the Chief Financial Officer to deposit in the Fund any and all other funds received by or on behalf of the Corporation or the hospital for the purpose of operating the Corporation, the hospital, and any other operations conducted by or through the Corporation on the site.

(3) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(b) Disbursements from the Fund may be used for all purposes related to operating the Corporation, the hospital, and other operations on the site.

(Sept. 14, 2011, D.C. Law 19-21, § 5114, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.04. Board of Directors.

(a)(1)(A) The Corporation shall be governed by a Board of Directors, which shall consist of 14 members, 11 of whom shall be voting members and 3 of whom shall be non-voting members.

(B) Of the voting members, the Mayor shall appoint 6 members, with the advice and consent of the Council, and the Council shall appoint 3 members.

(C) The Chief Financial Officer of the District of Columbia, or his or her designee, and a representative of the entity maintaining the largest collective

bargaining agreement with the Corporation, with that representative not being an employee of the Corporation, shall serve as voting ex officio members.

(D) The Chief Executive Officer of the Corporation, the Chief Medical Officer of the Corporation, and the President of the District of Columbia Hospital Association, or his or her designee, shall serve as non-voting ex officio members.

(2) Members shall have business or management expertise in health-systems management or integrated care-delivery systems or experience as a:

- (A) Practicing physician;
- (B) Nursing executive;
- (C) Finance officer;
- (D) Labor manager; or
- (E) Contract manager.

(b)(1) The terms of the voting members of the initial Board shall be as follows:

(A) Two members appointed by the Mayor and one member appointed by the Council shall serve 3-year terms;

(B) Two members appointed by the Mayor and one member appointed by the Council shall serve 2-year terms; and

(C) Two members appointed by the Mayor and one member appointed by the Council shall serve one-year terms.

(2) All subsequent voting-member appointees shall serve 3-year terms.

(c) The Mayor shall submit the names of the Mayor's nominees to the Council within 10 days of July 7, 2010, for a 45-day period of review. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed approved.

(d) No fewer than 90 days before the expiration of a member's term, the Mayor shall submit to the Council the name of a nominee to fill the vacancy. When a vacancy occurs for any reason other than expiration of a term, the Mayor shall submit the name of a nominee to the Council within 45 days after the vacancy occurs for a 45-day period of review. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed approved. A member appointed to fill a vacancy for an unexpired term shall serve only for the unexpired portion of the term, unless the member is reappointed for a new term.

(e) A Board member whose term has expired may continue to serve until a new member is appointed or for 180 days, whichever first occurs.

(f) The Mayor shall designate a chairperson from among the members who shall serve in that capacity at the pleasure of the Mayor.

(g) A Board member shall not be entitled to compensation but may be reimbursed for actual and necessary expenses incurred for performing his or her official duties. Unless prohibited by law, a Board member may engage in private employment, a profession, or a business.

(h) A Board member shall not be held personally liable for an action taken in the course of his or her official duties and responsibilities.

(i) The Mayor shall remove any Board member for misconduct or neglect of duty, as defined in the Corporation's bylaws, or for other good cause, after notice to the Board member and the Board.

(j) The Mayor shall immediately suspend any Board member charged with a misdemeanor or felony and shall remove the Board member if the member is found guilty of the charge.

(k) The Board shall maintain regular contact with the Director of the Department of Health, or successor agency, and shall meet with the Director upon the Director's request.

(Sept. 14, 2011, D.C. Law 19-21, § 5115, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.05. Governance of the Corporation.

(a) The powers of the Corporation shall be vested in and exercised by the Board. The Board may take action at a meeting held at a time and place fixed by the bylaws. The Board shall adopt rules for conducting its meetings.

(b)(1) The presence of 5 voting members shall constitute a quorum of the Board. A majority vote of the members present for a quorum shall be necessary for the Board to take any official action.

(2) A Board member shall be considered present for the purpose of establishing or maintaining a quorum either by being physically present at the site specified for the Board meeting or by being electronically present via a speaker telephone, web camera, or other device capable of transmitting the member's voice or voice and image to the Board members physically present and the Board members' voices or voices and images to the member employing electronic means to participate.

(c) The Board shall hold an annual meeting to inform the public of its plans and programs. The Board shall provide notice of the meeting by publishing notice in the District of Columbia Register and a newspaper of general circulation in the District not less than 30 days before the date of the meeting.

(d) The Board shall meet not less than once per month, at least 10 months each year. Board meetings shall comply with the requirements for open meetings pursuant to § 1-207.42.

(e) The Corporation's fiscal year shall coincide with the fiscal year of the District government.

(f) The Board shall appoint the Chief Executive Officer ("CEO") of the United Medical Center as CEO of the Corporation and to be in charge of the day-to-day affairs of the Corporation, including the hospital and other operations at the site. The Board may subsequently conduct a national search to fill the position of CEO. The CEO shall serve at the pleasure of the Board.

(g) The Board may engage a hospital management company to assist in hospital operations and may contract or enter into leases with third parties to operate discrete facilities within the hospital or on the site.

(h) The Board shall hold its first meeting no later than 7 days from the date of the appointment of 7 or more members.

(i) The Board shall determine the qualifications and credentialing for health care professionals to receive the privilege of practicing within a health-care

facility under the Corporation's jurisdiction and make reasonable policies and procedures for the conduct of a person on the staff of a facility within the Corporation's jurisdiction, consistent with District law.

(Sept. 14, 2011, D.C. Law 19-21, § 5116, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.06. Powers of the Corporation.

The Corporation shall have the power to:

- (1) Sue and be sued in its corporate name;
- (2) Adopt a corporate seal and alter the seal at its pleasure;
- (3) Adopt, amend, and repeal bylaws governing the manner in which it may conduct business and how the powers vested in it may be exercised;
- (4) Borrow money for any of its corporate purposes pursuant to § 44-951.05 and as may be permitted under Chapter 2 of Title 1, and other laws of the District; provided, that the Corporation's debts shall not be subject to and shall not be backed by the full faith and credit of the District of Columbia;
- (5) Provide for the payment of obligations as may be permitted under Chapter 2 of Title 1 and other laws of the District;
- (6) Establish polices for contracting and procurement that are consistent with the principles of competitive procurement and, subject to District law, make and execute contracts, leases, and all other agreements or instruments necessary and appropriate for the exercise of its powers and the fulfillment of its corporate purposes;
- (7) Subject to Council approval by resolution, acquire, construct, and dispose of real or personal property of every kind, including a health-care facility or an interest in a health-care facility for its corporate purposes;
- (8) Operate, manage, superintend, maintain, repair, equip, and control a health-care facility under its jurisdiction, including seeking all necessary licenses, certifications, or other permits and establishing and collecting fees, rentals, or other charges, including reimbursement allowances for the sale, lease, or sublease of any health-care facility;
- (9) Provide health and medical services to the public directly or by agreement with a person, firm, or private or public corporation or association;
- (10) Establish policies governing admissions and health and medical services and fees and other charges, including reimbursement allowances for providing health and medical services;
- (11) Provide and maintain resident physician and intern medical services, as appropriate, and sponsor and conduct research, development, planning, evaluation, educational, and training programs, as appropriate;
- (12) Provide additional services and adopt a schedule of appropriate charges for additional services consistent with its corporate purposes;
- (13) Employ officers, executives, and management personnel who may formulate or participate in the formulation of the plans, policies, and standards or who may administer, manage, or operate the Corporation, fix their

qualifications, and prescribe their duties and other terms of employment, compensation, and benefits; except, that such personnel shall be excluded from collective bargaining representation and employ other personnel as may be necessary;

(14) Subject to the requirements of §§ 1-329.01, and 1-204.46b, apply for and receive donations, gifts, grants of money, real and personal property, services, or other aid;

(15) Maintain or purchase insurance, including errors and omissions insurance, for the Board and officers of the Corporation, or obtain indemnification against losses or liabilities of the Corporation;

(16) Enter into agreements with another organization, public or private, for goods and services as needed for its corporate purposes;

(17) Request and recommend that the Chief Financial Officer of the District of Columbia invest the Corporation's funds and make recommendations to the Chief Financial Officer of the District of Columbia how to administer funds;

(18) Retain or employ auditors, engineers, and private consultants by contract for rendering professional, management, or technical services and advice;

(19) Subject to District law, engage in a joint venture and participate in a network, alliance, consortium pool, or other cooperative arrangement with a public or private entity; and

(20) Do any and all things necessary and proper to carry out its corporate purposes.

(Sept. 14, 2011, D.C. Law 19-21, § 5117, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.07. Transfer of assets under Deed of Trust.

Upon foreclosure under the Deed of Trust, Security Agreement, Fixture Filing and Restrictive Covenants signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007, or upon any other transfer of assets, the Mayor is authorized to transfer all of the assets, including cash, accounts receivable, and real and personal property, of United Medical Center to the Corporation.

(Sept. 14, 2011, D.C. Law 19-21, § 5118, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.08. Personnel administration.

(a) Chapter 6 of Title 1 shall not apply to employees of the Corporation.

(b) Within 6 months of the first meeting of the Board, the Corporation shall promulgate policies, practices, and procedures relating to terms and conditions

of employment for personnel employed by the Corporation. Until the Corporation establishes a personnel system subject to applicable laws, the personnel system of the United Medical Center existing the day prior to September 14, 2011, shall continue to apply to the Corporation and its employees.

(c) Subject to federal and District law, the Corporation shall assume and be bound by all personnel contracts and existing collective bargaining agreements with labor organizations that represent employees transferred to the Corporation.

(d) This section shall not to [sic] be construed to limit the right of the Board to reorganize, restructure, reclassify, or eliminate positions.

(e) The Corporation shall give a hiring preference to qualified District residents.

(f) The Corporation shall have independent personnel authority, including the authority to establish its own personnel system, and shall not be subject to Chapter 6 of Title 1 or its implementing regulations.

(g) The Corporation, with advice from the CEO, shall develop a personnel system that includes rules prohibiting an employee from having a direct or indirect financial interest that conflicts with, or would appear to conflict with, the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

(h) The Board members and the CEO shall not have any interest, direct or indirect, as principal, surety, or otherwise in contract, where the expense or consideration of the contract is payable from Corporation funds.

(i) The Corporation may retain an independent contractor to deliver hospital services, except for financial services provided by the Office of the Chief Financial Officer. As part of the hospital services a contractor provides, the contractor may manage, supervise, evaluate, and propose disciplinary action for government hospital employees, except for employees reporting to the Chief Financial Officer of the District of Columbia, subject to the following limitations:

(1) The Corporation determines, in writing, that the contractor is providing services to the Corporation and that it is necessary for the operation of the hospital, or an affected department of the Hospital, for the contractor to supervise, manage, evaluate, and propose disciplinary action for the affected employees.

(2) In exercising authority to supervise, manage, evaluate, and propose disciplinary action, the contractor shall comply with all Hospital human resource policies, personnel contracts, and collective-bargaining agreements.

(3) A contractor's proposal for disciplinary action shall not become final unless approved by the Chief Executive Officer of the Hospital.

(4) The Hospital shall not be responsible for the contractor's negligence or misconduct related to managing or supervising hospital employees.

(Sept. 14, 2011, D.C. Law 19-21, § 5119, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.09. Budget.

The Board shall submit its proposed fiscal year 2011 operating budget and each subsequent operating budget for the Corporation to the Mayor on the date that District departments and agencies are required to submit proposed budgets to the Mayor.

(Sept. 14, 2011, D.C. Law 19-21, § 5120, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.10. Transfer of employees.

(a) The employees of United Medical Center shall be transferred to the Corporation with the same rights and obligations they enjoyed as employees of the United Medical Center.

(b) The employees transferred from the United Medical Center to the Corporation shall not be governed by Chapter 6 of Title 1 [§ 1-601.01 et seq.], or its implementing regulations and shall not enjoy any rights, benefits, or obligations afforded by Chapter 6 of Title 1.

(Sept. 14, 2011, D.C. Law 19-21, § 5121, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.11. Procurement law inapplicable.

(a) Chapter 3A of Title 2 and its implementing regulations shall not apply to the Corporation; except, that the Corporation shall be required to comply with the requirements regarding multiyear contracts and contracts in excess of \$1 million during a 12-month period pursuant to §§ 1-204.51 and 2-352.02.

(b) Procurement policies employed by the United Medical Center on the day prior to September 14, 2011, shall continue until the Corporation develops new procurement policies.

(Sept. 14, 2011, D.C. Law 19-21, § 5122, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.12. Exemption from taxation.

The assets and income of the Corporation shall be exempt from taxation by the District government.

(Sept. 14, 2011, D.C. Law 19-21, § 5123, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.13. Reports to the Mayor and the Council.

On or before December 29th of each year, the Corporation shall submit to the Mayor and the Council a report that sets forth for the prior fiscal year its operations and accomplishments, revenues and expenses, assets and liabilities at the end of the fiscal year, and the status of reserves, depreciation, and special, sinking, or other funds.

(Sept. 14, 2011, D.C. Law 19-21, § 5124, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition of section, see § 5016 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 5016 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.14. Representation and indemnification.

(a) The officers and employees of the Corporation shall not be considered District government employees for purposes of subchapter II of Chapter 4 of Title 2 [§ 2-411 et seq.], and the District of Columbia shall not be liable for any acts or occurrences of the Corporation regardless of whether the Corporation purchases insurance or whether purchased insurance covers any act or omission of an act.

(b) The District of Columbia may, upon request by the Corporation and at the discretion of the Attorney General for the District of Columbia (“Attorney General”), provide representation through the Office of the Attorney General to the Corporation and its officers and employees for legal matters related to their official duties.

(c) The Corporation may retain outside counsel, other than the Attorney General, at its own expense to provide representation for the Corporation and its officers and employees in actual or anticipated litigation related to their official duties and functions or in any other legal proceeding, lawsuit, grievance, or arbitration filed against the Corporation, its officers, or its employees.

(d) An action other than an action for medical negligence or malpractice may not be maintained against the Corporation for unliquidated damages to persons or property unless, within 6 months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the CEO of the approximate time, place, cause, and circumstances of the injury or damage.

(e) The District of Columbia and its officers and employees shall not be liable for and may not be made a party to any lawsuits or claims arising from the operation of the Corporation.

(Sept. 14, 2011, D.C. Law 19-21, § 5125, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.15. General Counsel.

(a) The Corporation may have a General Counsel who shall:

- (1) Be appointed by the CEO;
- (2) Be an attorney admitted in good-standing to the practice of law in the District of Columbia;
- (3) Be qualified by experience and training to advise the Corporation with respect to legal issues related to its powers and duties;
- (4) Have an attorney-client relationship with the Corporation; and
- (5) Advocate vigorously for the positions of the Corporation on legal issues.

(b) The General Counsel, with the consent of the CEO, may employ staff attorneys and other personnel.

(Sept. 14, 2011, D.C. Law 19-21, § 5126, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.16. Debts and borrowing.

(a) The Corporation is authorized by the Council pursuant to § 1-204.90(a)(6) to incur debt, including lines of credit, to carry out the authorized purposes of the Corporation. The Corporation may, at any time, and from time to time, enter into debt obligations, by resolution of the Board. Debt of the Corporation shall be payable solely from the revenues of the Corporation from whatever source derived and shall not be issued in the form of obligations maturing longer than 5 years, including renewals. The Corporation shall have the power to incur indebtedness regardless of whether the interest payable by the Corporation or the income derived by the holders of the evidence of the indebtedness is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxable income on the recipients. No official, employee, or agent of the Corporation shall be held personally liable solely because a debt instrument is issued.

(b) Any debt created pursuant to this section shall not:

- (1) Be considered general obligation debt of the District for any purpose, including the limitation on the annual aggregate limit on debt of the District of Columbia under § 1-206.03(b);
- (2) Constitute a lending of the public credit for private undertakings for purposes of § 1-206.02(a)(2);
- (3) Be a pledge of or involve the full faith and credit of the District of Columbia, other than with respect to any dedicated taxes; or
- (4) Constitute a debt of the District.

(Sept. 14, 2011, D.C. Law 19-21, § 5127, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.17. Continuation of privileges to practice.

(a) A health-care professional who has the privilege of practicing at the United Medical Center as of September 14, 2011, shall retain practice privileges with the Corporation until the:

- (1) Privilege expires;
- (2) Board alters or amends the privilege; or
- (3) Board revokes the privilege.

(b) The Board shall retain the policies regarding determining the qualifications for health-care professionals to receive the privilege of practicing that existed at United Medical Center on the day prior to September 14, 2011, until the Corporation replaces the policies pursuant to § 44-951.05(i).

(Sept. 14, 2011, D.C. Law 19-21, § 5128, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

§ 44-951.18. Authority of the Chief Financial Officer.

The Chief Financial Officer of the District of Columbia shall exercise authority over the Corporation consistent with §§ 1-204.24a through 1-204.24f.

(Sept. 14, 2011, D.C. Law 19-21, § 5129, 58 DCR 6226.)

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 44-951.01.

CHAPTER 10. NURSING HOMES AND COMMUNITY RESIDENCE FACILITIES PROTECTIONS.

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44-1001.01. Definitions.

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- 44-1004.01. Injunctive relief.
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Subchapter V. Miscellaneous

- 44-1005.01. Rules.
- 44-1005.02. [Repealed].

Subchapter I. Definitions.

§ 44-1001.01. Definitions.

For the purposes of this chapter, the term:

(1) "Administrator" means the person who is responsible for the day-to-day operation and management of a facility, including, in the case of a community residence facility, the Residence Director of the facility.

(2) "Affiliate" means:

(A) With respect to a partnership, each partner;

(B) With respect to a corporation, each officer and director and each stockholder who directly or indirectly owns or controls 10% or more of any class of securities issued by the corporation; and

(C) With respect to an individual:

(i) Each parent, child, grandchild, spouse, sibling, first cousin, aunt, and uncle of the individual, whether the relationship arises by blood, marriage, or adoption;

(ii) Each partnership in which the individual or an affiliate of the individual is a partner, and each other partner in that partnership; and

(iii) Each corporation in which the individual or an affiliate of the

individual is an officer, director, or stockholder who directly or indirectly owns or controls 10% or more of any class of securities issued by the corporation.

(2A) "Assisted Living Residence" shall have the same meaning as given the term in § 44-102.01(4).

(3) "Community residence facility" means that term as it is defined in § 44-501(a)(4).

(4) "Court" means the Superior Court of the District of Columbia.

(5) "District" means the District of Columbia.

(6) "Facility" means a nursing home, Assisted Living Residence, or community residence facility operating in the District.

(7) "Long-Term Care Ombudsman" means the person designated under 42 U.S.C. § 3027(a)(12) to perform the mandated functions of the Long-Term Care Ombudsman program in the District.

(8) "Nursing home" means that term as it is defined in § 44-501(a)(3).

(9) "Person" means an individual or individuals, an agency, a corporation, a partnership, the District government, or any other organizational entity.

(10) "Resident" means a resident of a facility.

(11) "Resident's representative" means:

(A) Any person who is knowledgeable about a resident's circumstances and has been designated by that resident to represent him or her;

(B) Any person other than a facility who has been appointed by a court either to administer a resident's financial or personal affairs or to protect and advocate for a resident's rights; or

(C) The Long-Term Care Ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraphs (A) and (B) of this paragraph.

(Apr. 18, 1986, D.C. Law 6-108, § 101, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(a), 36 DCR 534; June 24, 2000, D.C. Law 13-127, § 1404(a), 47 DCR 2647.)

Prior Codifications. — 1981 Ed., § 32-1401.

Effect of amendments. — D.C. Law 13-127 added a new paragraph (2A) defining "Assisted Living Residence" and in par. (6) added the phrase "Assisted Living Residence," after the phrase "nursing home".

Legislative history of Law 6-108. — Law 6-108, the "Nursing Home and Community Residence Facility Residents' Protections Act of 1985," was introduced in Council and assigned Bill No. 6-256, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 28, 1986, and February 11, 1986, respectively. Signed by the Mayor on February 24, 1986, it was assigned Act No. 6-138 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-218. — Law 7-218 was introduced in Council and assigned

Bill No. 7-334, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-293 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-127. — Law 13-127, the "Assisted Living Residence Regulatory Act of 2000," was introduced in Council and assigned Bill No. 13-107, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on January 4, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-297 and transmitted to both Houses of Congress for its review. D.C. Law 13-127 became effective on June 24, 2000.

Delegation of Authority. — Delegation of authority pursuant to Law 6-108, see Mayor's Order 87-47, February 17, 1987.

CASE NOTES

ANALYSIS

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Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hospital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

Federal law definitions.

"Skilled nursing facility," under Medicare, is substantial equivalent of term "nursing facility," under Medicaid; specific federal statutory language governing regulation of nursing facilities amended by Nursing Home Reform Law eliminated level of care distinctions recognized under Medicare and Medicaid regulatory schemes. Social Security Act, §§ 1819(a), 1919(a), as amended, 42 U.S.C. §§ 1395i-3(a), 1396r(a). *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

Federal pre-emption.

District of Columbia regulations establishing level of care distinctions in licensing and regulation of nursing facilities were preempted by comprehensive federal scheme establishing single standard of skilled care for all Medicare and Medicaid beneficiaries. Social Security Act, §§ 1819, 1919, as amended, 42 U.S.C. §§ 1395i-3, 1396r. *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

Medicare and Medicaid schemes are so pervasive that they preempt local regulation from field of establishing level of care distinctions in

provision of nursing care under Medicare or Medicaid. Social Security Act, §§ 1819, 1919, as amended, 42 U.S.C. §§ 1395i-3, 1396r. *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

District of Columbia's scheme of regulation of nursing care facilities, which allowed transfers and discharges of nursing facility residents based on level of care distinctions, was preempted by comprehensiveness of federal Medicare and Medicaid schemes. Social Security Act, § 1919(c)(1)(A)(x), (c)(2)(D)(iii), as amended, 42 U.S.C. § 1396r(c)(1)(A)(x), (c)(2)(D)(iii). *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

In general.

Congress' intent in passing Nursing Home Reform Law was to eliminate all level of care distinctions in provision of Medicare and Medicaid benefits. Social Security Act, §§ 1819, 1919, as amended, 42 U.S.C. §§ 1395i-3, 1396r. *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

Local agency's interpretation of federal Health Care Financing Administration's (HCFA) interpretation of federal Medicaid and Medicare statutes to allow for transfers and discharges from nursing home facilities based on level of care distinctions was not reasonable, and thus, district court was not required to give substantial deference to local agency's interpretation of HCFA's interpretation of statute; proper interpretation of HCFA's regulation governing transfer of nursing facility residents mandated that, when facility fails to meet unified federal nursing home standards under Medicare and Medicaid, resident may be transferred to facility which meets those standards in order to protect resident's welfare and that transfer could not be made on basis of level of care distinctions. Social Security Act, §§ 1819, 1919, 1919(b)(4)(A), as amended, 42 U.S.C. §§ 1395i-3, 1396r, 1396r(b)(4)(A). *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

*Subchapter II. Receiverships.***§ 44-1002.01. Purpose of receivership.**

The purpose of a receivership authorized under this subchapter shall be to safeguard the health, safety, and welfare of a facility's residents when seriously endangered, to ensure their continuity of care, to safeguard their rights as recognized by District and federal law, and to protect them from the increased stress and risk of trauma often associated with abrupt or unplanned transfer and discharge. A receiver appointed under this subchapter shall not take any actions or assume any responsibilities inconsistent with this purpose. Nothing

in this subchapter shall be construed to limit or abrogate any other common-law or statutory right to petition for receivership.

(Apr. 18, 1986, D.C. Law 6-108, § 201, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1411.

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For

§ 44-1002.02. Grounds for receivership.

A receiver may be appointed under this subchapter on one or more of the following grounds:

- (1) The facility is unlawfully operating without a current District license;
- (2) The licensee has abandoned the facility;
- (3) The facility is closing within 30 calendar days and cannot offer verifiable evidence that adequate arrangements, designed to minimize transfer trauma, have been made to relocate its residents;
- (4) A condition or practice in the facility poses a serious, widespread danger, either immediate or recurring, to the health, safety, or welfare of the residents;
- (5) Violations of residents' rights, established pursuant to § 44-504(a)(4), are chronic, substantial, and widespread;
- (6) Insolvency of an owner or the licensee has placed the continued operation of the facility in serious jeopardy; or
- (7) The facility has been issued a restricted or provisional license by the Department of Health.

(Apr. 18, 1986, D.C. Law 6-108, § 202, 33 DCR 1510; Apr. 29, 2010, D.C. Law 18-145, § 4(a), 57 DCR 1834.)

Section references. — This section is referred to in §§ 44-1002.03, 44-1002.05, and 44-1002.10.

Prior Codifications. — 1981 Ed., § 32-1412.

Effect of amendments. — D.C. Law 18-145 deleted "or" from the end of par. (5); substituted "; or" for a period at the end of par. (6); and added par. (7).

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 18-145. — For Law 18-145, see notes following § 44-504.

§ 44-1002.03. Petitions for receivership.

(a) Notwithstanding the availability of any other remedy, the Attorney General for the District of Columbia may, in the name of the District and based on one or more of the grounds listed in § 44-1002.02, petition the court to appoint a receiver for any facility.

(b) Notwithstanding the availability of any other remedy, a resident, a resident's representative, the Long-Term Care Ombudsman, or any other advocate representing the interests of a facility's residents may, based on one or more of the grounds listed in § 44-1002.02(2) through (6), submit a written request asking the Attorney General for the District of Columbia to petition the

court to appoint a receiver for any facility. If the Attorney General for the District of Columbia denies the request or does not file a petition within 5 days (excluding Saturdays, Sundays, and legal holidays) after receiving a request, the requestor may file with the court a petition for the appointment of a receiver.

(c) The licensee of any facility may, based on one or more of the grounds listed in § 44-1002.02, petition the court to appoint a voluntary receiver for that facility.

(Apr. 18, 1986, D.C. Law 6-108, § 203, 33 DCR 1510; Apr. 13, 2005, D.C. Law 15-354, § 67, 52 DCR 2638.)

Section references. — This section is referred to in §§ 44-1002.04, 44-1002.05, 44-1002.07, and 44-1002.10.

Prior Codifications. — 1981 Ed., § 32-1413.

Effect of amendments. — D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-1002.04. Notice and hearing requirements; ex parte appointment.

(a)(1) The court shall hold a hearing on a petition filed under § 44-1002.03 within 10 days (excluding Saturdays, Sundays, and legal holidays) after it is filed.

(2) The petitioner (if he or she is not the licensee) shall ensure that the licensee or administrator of the facility is served with notice of the hearing date and a copy of the petition:

(A) In accordance with court rules, at least 5 days (excluding Saturdays, Sundays, and legal holidays) before the hearing; or

(B) By a notice conspicuously posted inside or on the front door of the facility at least 3 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, if the petitioner files with the court a sworn statement setting forth in detail his or her diligent but unsuccessful efforts to find the licensee or administrator and serve process.

(3) Upon filing a petition with the court, a petitioner other than the District shall serve notice of the hearing date and a copy of the petition on the Attorney General for the District of Columbia. No later than 5 days (excluding Saturdays, Sundays, and legal holidays) after receiving a copy of the petition, the Attorney General for the District of Columbia shall, to the extent allowable under federal law, make available to the petitioner for his or her use in the proceedings certified copies of all licensure and Medicare/Medicaid certification reports within the custody of the District government that document conditions in the facility within the previous 2 years.

(b)(1) The court may appoint a receiver immediately upon the filing of a petition under § 44-1002.03 if it finds probable cause to believe a condition or practice in a facility poses an immediate danger of death or life-threatening injury to the residents.

(2) In the event of an ex parte appointment under paragraph (1) of this subsection, the petitioner (if he or she is not the licensee) shall ensure that the licensee or administrator of the facility is served with notice of the hearing date and copies of the petition, any supporting affidavit(s), and the order of appointment:

(A) By personal service within 24 hours after the appointment; or

(B) By a notice conspicuously posted inside or on the front door of the facility within 48 hours after the appointment, if the petitioner files with the court a sworn statement setting forth in detail his or her diligent but unsuccessful efforts to find the licensee or administrator and serve process.

(Apr. 18, 1986, D.C. Law 6-108, § 204, 33 DCR 1510; Apr. 13, 2005, D.C. Law 15-354, § 67, 52 DCR 2638.)

Section references. — This section is referred to in § 44-1002.10.

Prior Codifications. — 1981 Ed., § 32-1414.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

§ 44-1002.05. Appointment of receiver; continuation of ex parte appointment.

(a) After a hearing the court may appoint a receiver for the facility or continue the appointment of a receiver made ex parte if it finds that the petitioner has proven, by clear and convincing evidence, the existence of one or more of the grounds for receivership listed in § 44-1002.02

(b)(1) The Mayor shall, after consulting with appropriate District government agencies, the Long-Term Ombudsman, and representatives from nursing home, Assisted Living Residence, and community residence facility providers, establish a list of potential receivers with experience in the delivery of health-care or personal care services preferably in the operation of a nursing home, Assisted Living Residence, or community residence facility.

(2) Except as provided in paragraph (3) of this subsection, the court may appoint as a receiver any qualified person with experience in the delivery of health-care or personal care services preferably in the operation of a nursing home, Assisted Living Residence, or community residence facility. In deciding whom to appoint, the court shall give strong consideration to the list of mayoral nominees established pursuant to paragraph (1) of this subsection.

(3) The court shall not appoint as a receiver:

(A) An employee of a District government agency that licenses, operates, or provides a financial payment to the type of facility being placed in receivership;

(B) The owner, licensee, or administrator of the facility, or an affiliate of the owner, licensee, or administrator; or

(C) A parent, child, grandchild, spouse, domestic partner, sibling, first cousin, aunt, or uncle of one of the facility’s residents, whether the relationship arises by blood, marriage, domestic partnership, or adoption. For the purposes

of this subparagraph, the term “domestic partner” shall have the same meaning as provided in § 32-701(3), and the term “domestic partnership” shall have the same meaning as provided in § 32-701(4).

(c)(1) Before a receiver takes charge of a facility, he or she shall file a bond with the court that:

(A) Does not exceed the value of the facility and its assets; and

(B) Runs to the District for the benefit of all persons interested in his or her faithful performance of the receivership.

(2) Unless the court directs otherwise, the receiver may pay the premium of the bond from the facility’s income.

(d) Any person authorized to file a petition under § 44-1002.03 may petition the court to appoint a substitute for a receiver who:

(1) Dies;

(2) Has or develops a disability that impedes his or her ability to carry out the receivership;

(3) Has or develops a conflict of interest; or

(4) Fails to make reasonable progress in carrying out the receivership.

(Apr. 18, 1986, D.C. Law 6-108, § 205, 33 DCR 1510; June 24, 2000, D.C. Law 13-127, § 1404(b), 47 DCR 2647; Sept. 12, 2008, D.C. Law 17-231, § 39, 55 DCR 6758.)

Section references. — This section is referred to in §§ 42-1002.10 and 44-1002.07.

Prior Codifications. — 1981 Ed., § 32-1415.

Effect of amendments. — D.C. Law 13-127 amended subsec. (b)(1) and (2) by adding the phrase “, Assisted Living Residence,” after the phrase “nursing home” wherever it appears and by adding the phrase “or personal care services,” after the word “health-care” wherever it appears.

D.C. Law 17-231 rewrote subsec. (b)(3)(C), which had read as follows: “(C) A parent, child, grandchild, spouse, sibling, first cousin, aunt, or uncle of one of the facility’s residents, whether the relationship arises by blood, marriage, or adoption.”

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 13-127. — For Law 13-127, see notes following § 44-401.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

§ 44-1002.06. Powers and duties of receiver.

(a) A receiver shall:

(1) Take charge of the operation and management of the facility and assume all rights to possess and use the building, fixtures, furnishings, records, and other related property and goods that the owner, licensee, or administrator would have if the receiver had not been appointed;

(2) Give notice of the receivership, in accordance with subsection (b) of this section, to the facility’s residents and employees, each resident’s representative, the Long-Term Care Ombudsman, and any other person whom the court orders should receive notice;

(3) Exercise his or her powers to correct all of the conditions that

prompted the need for receivership, to ensure quality care for each resident, and to promote full respect for the rights of residents established by District and federal law;

(4) Unless the facility is closing, take all steps necessary to maintain or restore District licensure and federal Medicare/Medicaid certification;

(5) Preserve all property and records with which he or she is entrusted;

(6) Report to the court in accordance with a schedule established by the court; and

(7) Carry out any other duties established by the court.

(b) The notice required by subsection (a)(2) of this section shall include at a minimum the following information in not less than 12-point type:

(1) The reasons for and purpose of the receivership;

(2) The identity of the receiver and how he or she may be contacted;

(3) The anticipated duration of the receivership; and

(4) Unless the receiver was appointed to facilitate the orderly transfer or discharge of residents, a statement in boldface making clear to the residents that they do not have to move.

(c) Except as otherwise provided by Chapter 13 of Title 7, whenever a resident is to be discharged, transferred, or relocated, a receiver shall:

(1) Comply with subchapter III of this chapter;

(2) Explain to the resident and resident's representative the alternative placements that are available, help them find an appropriate alternative placement, and provide them with information about the alternative placement chosen;

(3) Transport the resident to the alternative placement chosen; and

(4) Transfer all property of and records pertaining to the resident, including all necessary health information, to the resident, resident's representative, or appropriate authority at the alternative placement.

(d) A receiver may:

(1) Use in a reasonable and prudent manner all private and third-party payments to the facility, including payments made under Medicare or Medicaid and, with the approval of the court, money from the special fund or account if established under § 44-1002.09;

(2) Enter into contracts and hire agents, consultants, and employees to carry out the powers and duties established by this section;

(3) Direct, manage, and discharge employees of the facility, subject to District law and any contract rights they may have; and

(4) Exercise any other powers authorized by the court.

(e) If the structural, architectural, or environmental conditions of a facility violate District or federal law or otherwise endanger the health, safety, or welfare of the residents, the receiver may correct the violation:

(1) Without the consent of the court, if the cost of the correction does not exceed \$5,000; or

(2) Upon court approval of a written estimate and plan of correction, if the cost of the correction exceeds \$5,000.

(f)(1) Except as provided in paragraphs (2) through (6) of this subsection, a receiver shall honor all leases, mortgages, secured transactions, and other contracts related to the facility and its operation.

(2) A receiver shall assume all rights to enforce or avoid the terms of a lease, mortgage, secured transaction, or other contract related to the facility and its operation that the owner, licensee, or administrator would have if the receiver had not been appointed.

(3) A receiver shall not be required to honor a lease, mortgage, secured transaction, or other contract related to the facility and its operation if the obligee is, or at the time the obligation was created was, the licensee or administrator of the facility or an affiliate of the licensee or administrator.

(4) A receiver may petition the court to allow him or her to wholly or partially avoid the terms of a lease, mortgage, secured transaction, or other contract that the licensee or administrator of the facility entered into if those terms provide for a rent, interest rate, or other payment substantially in excess of an amount that was reasonable at the time the contract was entered into, or if performance of the contract would substantially impede the receiver's ability to carry out the purposes of the receivership.

(5)(A) The court shall hold a hearing on a petition filed under paragraph (4) of this subsection within 15 days (excluding Saturdays, Sundays, and legal holidays) after it is filed.

(B) The receiver shall ensure that, at least 10 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, notice of the hearing date and a copy of the petition are served in accordance with court rules on all persons whose legal or beneficial interest in the contract at issue is ascertainable with reasonable diligence.

(6) If the court finds that the receiver has proven the averments in the petition by clear and convincing evidence, it may, for the duration of the receivership, excuse performance of the contract or adjust the rent, interest rate, or other payment under the contract to an amount that was reasonable at the time the contract was entered into.

(7) Compliance with a court order issued under paragraph (6) of this subsection shall be a defense to any action brought against a receiver alleging breach of contract. The receiver's compliance with a court order, however, shall not relieve the licensee or administrator of the facility of his or her liability for the difference between the amount paid by the receiver and the amount originally due under the contract.

(g) A receiver shall be personally liable only for his or her acts of gross negligence or intentional wrongdoing in carrying out the receivership.

(h) A receiver shall be entitled to a reasonable fee established by the court to be paid from the revenues of the facility.

(Apr. 18, 1986, D.C. Law 6-108, § 206, 33 DCR 1510.)

Section references. — This section is referred to in § 44-1002.07.

Prior Codifications. — 1981 Ed., § 32-1416.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1002.07. **Termination of receivership.**

(a) Except as provided in subsection (b) of this section, a receivership shall terminate when:

(1) The person who will assume control of the facility has been granted a current license by the Mayor and:

(A) The time period specified in the order appointing the receiver elapses and is not extended; or

(B) The court determines the receivership is no longer necessary because the grounds on which it was based no longer exist; or

(2) The facility is closing and all of its residents have been transferred or discharged.

(b)(1) Notwithstanding subsection (a) of this section, a receivership of a private facility shall not be terminated in favor of any person who was the licensee or administrator at the time a petition was filed under § 44-1002.03, or, in the discretion of the court, any person who is or was an affiliate of the licensee or administrator, unless he or she first:

(A) Reimburses the District government for any increase in Medicaid expenditures needed to finance the receiver's bond premium under § 44-1002.05(c)(2), to pay the receiver's fee under § 44-1002.06(h), or to correct deficiencies caused by the licensee's or administrator's own negligence; and

(B) Reimburses the District government for any amount it loaned the receiver for major repairs or improvements to the facility, or assumes an obligation to repay the loan and provides collateral or other assurance of payment deemed sufficient by the Mayor.

(2) The court may in addition require that, before a person specified in paragraph (1) of this subsection resumes control of a facility, he or she post bond in an amount it deems appropriate as security against future noncompliance with the law. If the receivership is not reinstated under subsection (c) of this section, the bond money shall be returned.

(c) Should it appear that, within 2 years after a receivership is terminated in favor of a person specified in subsection (b)(1) of this section, that person is not maintaining the facility in substantial compliance with all applicable laws, and should the court so find after granting notice and a hearing to all parties to the earlier receivership proceeding, the previous order appointing a receiver may be reinstated. A receiver thus reappointed may use all or part of any bond posted pursuant to subsection (b)(2) of this section to remedy the deficiencies.

(Apr. 18, 1986, D.C. Law 6-108, § 207, 33 DCR 1510.)

Section references. — This section is referred to in § 44-1002.10.

Prior Codifications. — 1981 Ed., § 32-1417.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1002.08. **Final accounting.**

Within 30 calendar days after termination of a receivership, the receiver

shall give the court a complete accounting of all property with which he or she has been entrusted, all funds collected, and all expenses incurred.

(Apr. 18, 1986, D.C. Law 6-108, § 208, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1418. legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For

§ 44-1002.09. Special fund or account.

(a) The Mayor may establish a special revolving fund or a separate allocable revenue account in the General Fund to provide financial support in the form of loans to a receiver of a facility. If established, this fund or account may be supported in accordance with subsection (f) of this section.

(b) For the purposes of this section, the term “fund” means the special revolving fund or separate allocable revenue account referred to in subsection (a) of this section.

(c) If expenses remain unpaid after a receiver uses all private and third-party payments, the receiver may petition the court for money from the fund. Before the court authorizes use of money from the fund, it shall hold a hearing at which the Mayor, the receiver, the licensee, the owner, and the administrator of the facility may offer evidence on whether the court should approve the loan. Notice of the hearing shall be given to the Mayor, the receiver, the licensee, the owner, and the administrator of the facility at least 7 days (excluding Saturdays, Sundays, and legal holidays) before the hearing.

(d)(1) A loan from the fund shall create an automatic lien on the facility and its assets in the amount of the loan. The receiver shall file with the Mayor a document setting forth:

(A) The amount of the loan;

(B) The name of the facility to which the lien attaches; and

(C) A description of the assets of the facility that are affected by the lien.

(2) A lien created under this subsection shall:

(A) Extend to the property of the facility described in the document filed under paragraph (1) of this subsection and to the beneficial interest in that property possessed by the owner; and

(B) Have priority over any other lien or interest that attaches after the filing date, except as otherwise provided by federal law.

(e) In addition to receivership loans, the Mayor may use money from the fund for low-interest loans or grants to facilities to help improve resident care, address the personal needs of residents, and enhance resident safety.

(f) The Mayor may support the fund with money received from:

(1) The collection of civil fines, penalties, and related costs imposed against a facility;

(2) The sale of properties subject to liens created by this section;

(3) The assessment of facility licensure fees; and

(4) The repayment of loans made under this section.

(g) Any money in the fund in excess of \$500,000 shall revert to the General Fund.

(Apr. 18, 1986, D.C. Law 6-108, § 209, 33 DCR 1510.)

Cross references. — Health-care and community residence facility, hospice, and home care licensure, civil fines, penalties, and costs, see § 44-509.

Section references. — This section is referred to in § 44-1002.06.

Prior Codifications. — 1981 Ed., § 32-1419.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Delegation of Authority. — Delegation of authority pursuant to Law 6-108, see Mayor's Order 87-47, February 17, 1987.

§ 44-1002.10. Appointment of court monitor.

(a) Any person authorized to file a petition for receivership may, based on one or more of the grounds listed in § 44-1002.02, petition the court for the appointment of a monitor. In addition, in lieu of appointing a receiver when a petition for receivership has been filed, the court may, on either its own motion or the motion of a party, appoint a monitor instead. The grounds and procedures set forth in §§ 44-1002.02 to 44-1002.05, except for the requirement of a bond in § 44-1002.05(c), shall apply to the appointment of a monitor. The appointment of a monitor may be terminated by the court for any of the reasons listed in § 44-1002.07(a) or if the court determines that a receiver should be appointed.

(b) A monitor appointed under this section shall observe the operation of the facility, advise the facility on how to comply with District and federal law, and report periodically to the court. In each report to the court, the monitor shall make a recommendation on whether a receiver should be appointed for the facility.

(c) Whenever a person requests the Attorney General for the District of Columbia to petition for the appointment of a receiver under § 44-1002.03(b) and the Attorney General for the District of Columbia instead petitions the court for the appointment of a monitor, the request shall be considered denied and the requestor may petition the court for the appointment of a receiver.

(Apr. 18, 1986, D.C. Law 6-108, § 210, 33 DCR 1510; Apr. 13, 2005, D.C. Law 15-354, § 67, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-1420.

Effect of amendments. — D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Subchapter III. Discharge, Transfer, and Relocation of Residents.

§ 44-1003.01. Grounds for involuntary discharge, transfer, or relocation by facility.

(a) Unless a resident and his or her representative consent otherwise, a

facility may discharge the resident, transfer the resident to another facility, or relocate the resident from one part or room of the facility to another only:

(1) If essential to meet that resident's documented health-care needs or to be in accordance with his or her prescribed level of care;

(2) If essential to safeguard that resident or one or more other residents from physical or emotional injury;

(3) On account of nonpayment for his or her maintenance, after reasonable and appropriate notice, except as prohibited by subsection (b) of this section and 42 U.S.C. § 1395 et seq. and 42 U.S.C. § 1396 et seq.;

(4) If essential to meet the facility's reasonable administrative needs and no practicable alternative is available; or

(5) If the facility is closing or officially reducing its licensed capacity.

(b) No facility that is a District Medicaid provider may discharge, transfer, or relocate a resident on account of his or her conversion from private-pay or Medicare to Medicaid status, or on account of a temporary hospitalization if payment or reimbursement for his or her bed continues to be made available.

(Apr. 18, 1986, D.C. Law 6-108, § 301, 33 DCR 1510; Apr. 29, 2010, D.C. Law 18-145, § 4(b), 57 DCR 1834.)

Section references. — This section is referred to in § 44-1003.03.

Prior Codifications. — 1981 Ed., § 32-1431.

Effect of amendments. — D.C. Law 18-145, in subsec. (a)(3), substituted "maintenance, after reasonable and appropriate notice," for "maintenance,".

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 18-145. — For Law 18-145, see notes following § 44-504.

CASE NOTES

ANALYSIS

Construction and application.

Federal pre-emption.

In general.

Readmission of resident.

Review.

Weight and sufficiency of evidence.

Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hospital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

Federal pre-emption.

District of Columbia regulations establishing level of care distinctions in licensing and regu-

lation of nursing facilities were preempted by comprehensive federal scheme establishing single standard of skilled care for all Medicare and Medicaid beneficiaries. Social Security Act, §§ 1819, 1919, as amended, 42 U.S.C. §§ 1395i-3, 1396r. *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

Medicare and Medicaid schemes are so pervasive that they preempt local regulation from field of establishing level of care distinctions in provision of nursing care under Medicare or Medicaid. Social Security Act, §§ 1819, 1919, as amended, 42 U.S.C. §§ 1395i-3, 1396r. *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

District of Columbia's scheme of regulation of nursing care facilities, which allowed transfers and discharges of nursing facility residents based on level of care distinctions, was preempted by comprehensiveness of federal Medicare and Medicaid schemes. Social Security Act, § 1919(c)(1)(A)(x), (c)(2)(D)(iii), as amended, 42 U.S.C. § 1396r(c)(1)(A)(x),

(c)(2)(D)(iii). *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

In general.

Local agency's interpretation of federal Health Care Financing Administration's (HCFA) interpretation of federal Medicaid and Medicare statutes to allow for transfers and discharges from nursing home facilities based on level of care distinctions was not reasonable, and thus, district court was not required to give substantial deference to local agency's interpretation of HCFA's interpretation of statute; proper interpretation of HCFA's regulation governing transfer of nursing facility residents mandated that, when facility fails to meet unified federal nursing home standards under Medicare and Medicaid, resident may be transferred to facility which meets those standards in order to protect resident's welfare and that transfer could not be made on basis of level of care distinctions. Social Security Act, §§ 1819, 1919, 1919(b)(4)(A), as amended, 42 U.S.C. §§ 1395i-3, 1396r, 1396r(b)(4)(A). *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

Readmission of resident.

District of Columbia Department of Health (DOH) administrative law judge (ALJ) had authority to order readmission of a patient who was discharged from Medicaid- and Medicare-certified nursing facility before a hearing upon determining that discharge notice was unlawful for failing to provide location to which patient was to be discharged. *Paschall v. D.C. Dep't of Health*, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

District of Columbia Department of Health (DOH) administrative law judge (ALJ), in considering the validity of a discharge notice, may properly order readmission of a Medicaid resident in whose favor he has found either after a hearing or before a hearing, upon determining that the discharge notice was unlawful. *Paschall v. D.C. Dep't of Health*, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

Fact that District of Columbia Department of Health (DOH) administrative law judge (ALJ) possesses the authority to order readmission of a Medicaid resident who was discharged pursuant to an invalid discharge notice does not require ALJ to exercise such authority or make the exercise of the authority appropriate in all cases. *Paschall v. D.C. Dep't of Health*, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

Review.

Because local agencies ignored findings of their own administrative law judges that transfers of residents of nursing care facilities based on level of care distinctions violated federal law, district court would not defer to judgment of local agencies that its regulations were in compliance with federal law. Social Security Act, §§ 1819, 1919, as amended, 42 U.S.C. §§ 1395i-3, 1396r. *Newman v. Kelly*, 848 F. Supp. 228, 1994 U.S. Dist. LEXIS 3817 (1994).

Remand was required to permit District of Columbia Department of Health (DOH) administrative law judge (ALJ) to determine whether patient, who was discharged from Medicaid- and Medicare-certified nursing facility upon invalid notice, continued to seek readmission to facility, whether patient relinquished or waived his right to readmission, and whether patient's readmission could be achieved without endangering the health and safety of himself or other residents. *Paschall v. D.C. Dep't of Health*, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

Weight and sufficiency of evidence.

Need for involuntary discharge of 97-year-old woman from community residence facility was not proven by clear and convincing evidence where decision was based on ambiguous medical certification form signed by physician which contradicted other, more fully articulated evidence by same physician. D.C. Code 1981, §§ 32-1431(a), 32-1433, 32-1433(b, c). *Henson v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 560 A.2d 543, 1989 D.C. App. LEXIS 122 (1989).

§ 44-1003.02. Notice to resident and resident's representative.

(a) Whenever a resident is to be discharged, transferred, or relocated, a facility representative shall give that resident and his or her representative both oral and written notice of the reasons for, procedures for contesting, and proposed effective date of the discharge, transfer, or relocation. Except as provided in subsection (b) of this section or unless the resident and his or her representative consent to shorter notice, the oral and written notice shall be given at least 21 calendar days before a proposed discharge or transfer from the facility, and at least 7 calendar days before a proposed relocation within the facility.

(b) The time requirements for advance oral and written notice set forth in subsection (a) of this section shall not apply if:

(1) A more immediate discharge, transfer, or relocation is necessitated by the resident's urgent medical needs as explicitly delineated in the signed, written orders of an attending physician; or

(2) The Long-Term Care Ombudsman determines that emergency or other compelling circumstances necessitate a more immediate discharge, transfer, or relocation, and the basis for that determination is documented in the clinical records of those discharged, transferred, or relocated.

(c) Consent by a resident and his or her representative to a discharge, transfer, relocation, or abbreviated notice under this subchapter shall be valid only if knowingly and voluntarily given at the time the move is proposed.

(d) The written notice required by subsection (a) of this section shall be on a form prescribed by the Mayor and shall at a minimum contain:

(1) The specific reason(s), stated in detail and not in conclusory language, for the proposed discharge, transfer, or relocation;

(2) The proposed effective date of the discharge, transfer, or relocation;

(3) A statement in not less than 12-point type that reads:

"You have a right to challenge this facility's decision to discharge, transfer, or relocate you. If the decision is to discharge you from the facility or to transfer you to another facility and you think you should not have to leave, you or your representative have 7 days from the day you receive this notice to inform the Administrator [Residence Director, if a community residence facility] or a member of the staff that you are requesting a hearing and to complete the enclosed hearing request form and mail it in the preaddressed envelope provided. If you are mailing the hearing request form from the facility, the day you place it in the facility's outgoing mail or give it to a member of the staff for mailing shall be considered the date of mailing for purposes of the time limit. In all other cases, the postmark date shall be considered the date of mailing. If, instead, the decision is to relocate you within the facility and you think you should not have to move to another room, you or your representative have only 5 days to do the above.

"If you or your representative request a hearing, it will be held no later than 5 days after the request is received in the mail, and, in the absence of emergency or other compelling circumstances, you will not be moved before a hearing decision is rendered. If the decision is against you, in the absence of an emergency or other compelling circumstances you will have at least 5 days to prepare for your move if you are being discharge or transferred to another facility, and at least 3 days to prepare for your move if you are being relocated to another room within the facility.

"To help you in your move, you will be offered counseling services by the staff, assistance by the District government if you are being discharged or transferred from the facility, and, at your request, additional support from the Long-Term Care Ombudsman program. If you have any questions at all, please do not hesitate to call one of the phone numbers listed below for assistance.";

(4) A hearing request form, together with a postage paid envelope preaddressed to the appropriate District official or agency;

(5) The name, address, and telephone number of the person charged with the responsibility of supervising the discharge, transfer, or relocation;

(6) The names, addresses, and telephone numbers of the Long-Term Care Ombudsman program and local legal services organizations; and

(7) The location to which the resident will be transferred.

(d-1) Upon oral and written notification of discharge, the nursing facility shall provide to the resident and his or her representative:

(1) A current assessment of the resident's care needs and the kind of service the resident will need upon discharge;

(2) Information about the resident's right to receive counseling that explains the resident's options of community-based care and care in the home, including the right to request that the facility arrange a visit to at least one alternative community-based care facility; and

(3) A discharge plan that:

(A) Links the resident with community resources, including the DC Aging and Disability Resource Center;

(B) Explains the resident's options of community-based care and care in the home, including the right to request that the facility arrange a visit to at least one alternative community-based care facility; and

(C) Sets forth an arrangement for the resident and an immediate family member or legal representative, if any, to visit at least one alternative community-based care facility, at the resident's request.

(e) Copies of the written notice required by subsection (a) of this section shall be placed in the resident's clinical record and shall be transmitted to the Mayor's designee and, if the resident's care is paid in whole or in part through Medicaid, the Director of the Department of Human Services ("DHS"), and the Long-Term Care Ombudsman.

(f) Whenever nonpayment is the ground for a proposed involuntary discharge or transfer, the resident shall have the right to redeem up to the time that the discharge or transfer is to be effected and, if full payment is made, shall have the right to remain in the facility.

(Apr. 18, 1986, D.C. Law 6-108, § 302, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(b), 36 DCR 534; Apr. 29, 2010, D.C. Law 18-145, § 4(c), 57 DCR 1834.)

Cross references. — Long-term care ombudsman program, ombudsman duties, see § 7-702.04.

Section references. — This section is referred to in § 44-1003.03.

Prior Codifications. — 1981 Ed., § 32-1432.

Effect of amendments. — D.C. Law 18-145, in subsec. (d), deleted "and" from the end of par. (5), substituted "; and" for a period at the end of par. (6), and added par. (7); and added subsec. (d-1).

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 18-145. — For Law 18-145, see notes following § 44-504.

CASE NOTES

Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hos-

pital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

§ 44-1003.03. Hearing.

(a)(1) Whenever a facility decides to involuntarily discharge, transfer, or relocate a resident, that resident, his or her representative, or the Long-Term Care Ombudsman may contest the decision by mailing a written hearing request to the Mayor and notifying the administrator or facility staff of the request:

(A) Within 7 calendar days after receiving notice of a proposed discharge or transfer to another facility; or

(B) Within 5 calendar days after receiving notice of a proposed relocation within the facility.

(2) If the resident or resident's representative mails the hearing request from the facility, the day he or she places it in the facility's outgoing mail or gives it to a member of the facility staff for mailing shall be considered the date of mailing for purposes of the 7-day and 5-day time limits. In all other cases, the postmark date shall be considered the date of mailing.

(3) A timely hearing request shall stay the discharge, transfer, or relocation unless a condition set forth in § 44-1003.02(b)(1) and (2) develops in the interim.

(b) The Mayor shall hold a hearing at the resident's facility within 5 calendar days, and shall render a decision within 7 calendar days, after a timely hearing request is received. The facility shall have the burden of proof unless the ground for the proposed discharge, transfer, or relocation is a prescribed change in the resident's level of care, in which case the person(s) responsible for prescribing that change shall have the burden of proof and the resident shall have the right to challenge the level of care determination at the hearing. A hearing held under this section may not be used by the resident to litigate or relitigate Medicaid eligibility.

(c) If the Mayor finds that the existence of a ground listed in § 44-1003.01(a) has been proven by clear and convincing evidence, the resident shall not be:

(1) Discharged or transferred from the facility before the 22nd calendar day following his or her receipt of the notice required by § 44-1003.02(a) or the 5th calendar day following his or her notification of the hearing decision, whichever is later, unless a condition set forth in § 44-1003.02(b)(1) and (2) develops in the interim; or

(2) Relocated within the facility before the 8th calendar day following his or her receipt of the notice required by § 44-1003.02(a) or the 3rd calendar day following his or her notification of the hearing decision, whichever is later, unless a condition set forth in § 44-1003.02(b)(1) and (2) develops in the interim.

(Apr. 18, 1986, D.C. Law 6-108, § 303, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(c), 36 DCR 534.)

Cross references. — Long-term care ombudsman program, ombudsman duties, see § 7-702.04.

Section references. — This section is referred to in § 44-1003.04.

Prior Codifications. — 1981 Ed., § 32-1433.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 7-218. — For

legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 44-1001.01.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 6-108, see Mayor's Order 86-129, August 8, 1986.

Delegation of authority pursuant to D.C. Law 6-108, "Nursing Home and Community Residence Facility Residents' Protection Act of 1985.", see Mayor's Order 88-230, October 19, 1988.

CASE NOTES

ANALYSIS

Construction and application.
Weight and sufficiency of evidence.

Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hospital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Con-*

sumer & Regulatory Affairs, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

Weight and sufficiency of evidence.

Need for involuntary discharge of 97-year-old woman from community residence facility was not proven by clear and convincing evidence where decision was based on ambiguous medical certification form signed by physician which contradicted other, more fully articulated evidence by same physician. D.C. Code 1981, §§ 32-1431(a), 32-1433, 32-1433(b, c). *Henson v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 560 A.2d 543, 1989 D.C. App. LEXIS 122 (1989).

§ 44-1003.04. Discussion and counseling.

Before a resident is voluntarily or involuntarily discharged, transferred to another facility, or relocated within a facility, a facility representative shall discuss the reasons for the move with the resident and his or her representative and shall answer any questions they must have about the move or the written notice they received pursuant to § 44-1003.02(a). The contents of this discussion shall be summarized in writing, include the names of the individuals involved in the discussion, and be made a part of the resident's clinical record. In addition, the facility representative shall strongly recommend and offer to provide counseling services to the resident and his or her representative before the move. If the resident has requested a hearing pursuant to § 44-1003.03(a), facility staff shall attempt to prepare the resident for the possibility of having to move on 3-day (for an intra-facility relocation) or 5-day (for a discharge or transfer to another facility) notice should the hearing decision not be in his or her favor.

(Apr. 18, 1986, D.C. Law 6-108, § 304, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1434.

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1003.05. Grounds for transfer or discharge by Mayor.

(a) The Mayor may transfer or discharge any resident from any facility on 1 or more of the following grounds:

(1) The facility is unlawfully operating without a current District license, or is operating in violation of restrictions placed on its license;

(2) The Mayor has suspended, revoked, or refused to renew the facility's license;

(3) The facility is closing or intends to close and adequate arrangements for the relocation of its residents, in a manner designed to keep transfer trauma to a minimum, have not been made at least 30 calendar days before the anticipated closure date;

(4) The facility has requested the Mayor's assistance in the transfer or discharge, and the Mayor determines that the resident and his or her representative have consented to the transfer or discharge; or

(5) The Mayor has determined that an emergency exists which poses an immediate danger of death or serious physical injury to the resident.

(b) In deciding whether to transfer or discharge a resident under this section, the Mayor shall consider the likelihood of serious harm that may result if the resident remains in the facility and the availability of other remedies besides transfer or discharge.

(Apr. 18, 1986, D.C. Law 6-108, § 305, 33 DCR 1510.)

Section references. — This section is referred to in §§ 44-1003.06, 44-1003.07, 44-1003.08, and 44-1003.09.

Prior Codifications. — 1981 Ed., § 32-1435.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1003.06. Notice to facility owner or administrator; informal conference.

(a) Before a resident is transferred or discharged under § 44-1003.05(a)(1) through (3), the Mayor shall provide the licensee or administrator of the facility with a written notice stating the reasons for the intended action and informing the licensee or administrator of his or her right to an informal conference and a subsequent hearing. The licensee or administrator may contest a nonemergency transfer or discharge by submitting to the Mayor a written request for an informal conference within 4 days (excluding Saturdays, Sundays, and legal holidays) after he or she receives notice of the proposed transfer or discharge. A timely request for an informal conference shall stay the nonemergency transfer or discharge pending the Mayor's decision after the conference.

(b) The Mayor shall hold an informal conference within 4 days (excluding Saturdays, Sundays, and legal holidays) after a timely request for the conference is received. Following the conference, the Mayor shall affirm, modify, or reverse his or her previous decision to transfer or discharge the resident.

(Apr. 18, 1986, D.C. Law 6-108, § 306, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1436.

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1003.07. Notice to resident and resident's representative; informal conference.

(a) Before a resident is transferred or discharged under § 44-1003.05(a)(1) through (4), the Mayor shall provide the resident, the representative of a resident, and the Long-Term Care Ombudsman with a written notice stating the reasons for the intended action and informing them of their right to contest the transfer or discharge under § 44-1003.09.

(b) Before the transfer or discharge, the Mayor shall hold an informal conference with the resident, the representative of a resident, and the Long-Term Care Ombudsman at which they may present objections to the proposed transfer or discharge plan and alternative placement.

(Apr. 18, 1986, D.C. Law 6-108, § 307, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(d), 36 DCR 534.)

Cross references. — Long-term care ombudsman program, ombudsman duties, see § 7-702.04.

Prior Codifications. — 1981 Ed., § 32-1437.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see His-

torical and Statutory Notes following § 44-1001.01.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1003.08. Emergency transfer or discharge by Mayor.

(a) Whenever the immediate transfer or discharge of 1 or more residents is required by an emergency pursuant to § 44-1003.05(a)(5), the Mayor shall notify the licensee or administrator of the facility and any resident(s) to be removed that an emergency has been found to exist and that removal is ordered. In addition, whenever practicable the Mayor shall involve the resident(s) in the removal planning.

(b) Following emergency removal, the Mayor shall provide the licensee or administrator of the facility, each resident removed, and each removed resident's representative with a written notice stating the basis for the finding of an emergency and informing them of their right to contest the removal under § 44-1003.09.

(Apr. 18, 1986, D.C. Law 6-108, § 308, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1438.

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1003.09. Hearing to review Mayor's decision to transfer or discharge.

(a) Within 10 calendar days after a transfer or discharge by the Mayor, the licensee or administrator of the facility, any resident transferred or discharged, and the representative of any resident transferred or discharged may contest the transfer or discharge by submitting to the Mayor a written request for a hearing. The Mayor shall hold a hearing and render a decision within 30 calendar days after a timely hearing request is received. When a hearing request is submitted by a resident, the hearing shall be held at a location convenient to the resident.

(b) A resident who is transferred or discharged from a facility by the Mayor under § 44-1003.05 shall be liable to that facility only for the costs of his or her maintenance incurred before the transfer or discharge.

(c) If as a result of a hearing held under this section a resident is to be returned to a facility, the Mayor shall facilitate that return if the licensee or administrator of the facility, resident, or resident's representative requests assistance.

(Apr. 18, 1986, D.C. Law 6-108, § 309, 33 DCR 1510.)

Section references. — This section is referred to in §§ 44-1003.07 and 44-1003.08.

Prior Codifications. — 1981 Ed., § 32-1439.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1003.10. Transfer and discharge planning and assistance.

(a)(1) The Mayor shall offer planning and assistance, including information on available alternative placements, to residents who are being voluntarily or involuntarily transferred or discharged from their facilities pursuant to this subchapter. Residents shall be involved in planning their transfer or discharge and shall choose among available alternative placements, except that, when an emergency makes prior resident involvement impracticable, the Mayor may make a temporary placement until a final placement can be arranged. Except when an attending physician determines that it is medically contraindicated or if the need for immediate transfer or discharge requires otherwise, a resident shall be allowed at least 2 visits to a proposed alternative placement before his or her transfer or discharge.

(2) Whenever practicable, residents may choose their final alternative placement. No resident shall be forced to remain in a particular temporary or permanent placement, and, whenever placement alternatives are being compared by either the facility or the Mayor, strong consideration shall be given to the proximity of a resident's relatives and friends.

(b) The Mayor shall develop a model resident transfer and discharge plan to ensure the safe and orderly removal of residents and to protect their health, safety, welfare, and rights. This plan shall be developed in consultation with appropriate District government agencies, consumers, advocates, and the

Long-Term Care Ombudsman. The plan shall conform to the requirements of subsection (a) of this section and shall be followed whenever a resident is transferred or discharged unless alterations in the plan are necessary to meet the individual needs of a particular resident. In addition, the plan shall delineate the facility's responsibilities in both individual and group transfers and discharges. Each facility shall periodically train its staff in transfer and discharge planning in accordance with the plan developed under this subsection.

(c) To facilitate implementation of the resident transfer and discharge plan developed pursuant to subsection (b) of this section, the Mayor may place a relocation team in any facility from which residents are to be transferred or discharged.

(Apr. 18, 1986, D.C. Law 6-108, § 310, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1440.

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For

§ 44-1003.11. Notice of adverse action or voluntary facility closure.

(a) Whenever a facility receives written notice that its license is being restricted, suspended, revoked, or not renewed or that it is losing its Medicare or Medicaid certification, the licensee or administrator shall within 30 calendar days give written notice of this fact to the residents and employees of the facility, the residents' representatives, and the Long-Term Care Ombudsman.

(b) To the extent possible, the licensee or administrator of a facility shall give the Mayor, any resident to be transferred or discharged, the representative of any resident to be transferred or discharged, the facility's employees, and the Long-Term Care Ombudsman advance written notice of at least 90 calendar days before he or she voluntarily closes the facility or a part of the facility that, when closed, will require the transfer or discharge of more than 10% of the residents. This notice shall include the proposed date of and reasons for closing.

(c) Before all or part of a facility is voluntarily closed under subsection (b) of this section, a facility representative shall advise those residents to be transferred or discharged and their representatives of available alternative placements and shall offer to assist them in securing a placement. Until the date of closing, the facility shall fully comply with this chapter and all other applicable laws and rules.

(Apr. 18, 1986, D.C. Law 6-108, § 311, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1441.

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For

CASE NOTES

Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hos-

pital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

§ 44-1003.12. Exemption.

This subchapter shall not apply to individual transfers, discharges, or relocations of residents who are admitted or committed under Chapter 13 of Title 7.

(Apr. 18, 1986, D.C. Law 6-108, § 312, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1442.

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

CASE NOTES

Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hos-

pital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

§ 44-1003.13. Judicial review.

Any person who is aggrieved by the results of a hearing held by the Mayor pursuant to this subchapter shall have a right to judicial review in accordance with § 2-510.

(Apr. 18, 1986, D.C. Law 6-108, § 313, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1443.

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

CASE NOTES

Construction and application.

Nursing Home and Community Residence Facility Residents' Protection Act did not apply to short-term, temporary transfer of nursing home resident to hospital, and her subsequent return to nursing home, where resident's hos-

pital stay was less than 15 days. D.C. Code 1981, §§ 1-1510, 32-1401 et seq., 32-1401(6), 32-1431(a), (a)(1), 32-1432, 32-1433, 32-1443. *Baugh v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 611 A.2d 557, 1992 D.C. App. LEXIS 209 (1992).

*Subchapter IV. Private Rights of Action.***§ 44-1004.01. Injunctive relief.**

A resident, a resident's representative, the Long-Term Care Ombudsman, or

the Attorney General for the District of Columbia may bring an action in court for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a facility from violating any provision in subchapter III of this chapter, any rule issued by the Mayor pursuant to that subchapter, or any standard or resident's right established pursuant to § 44-504(a)(3) and (4).

(Apr. 18, 1986, D.C. Law 6-108, § 401, 33 DCR 1510; Apr. 13, 2005, D.C. Law 15-354, § 67, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 32-1451.

Effect of amendments. — D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

CASE NOTES

In general.

Provision of Nursing Home and Community Residence Facility Residents' Protection Act, authorizing a Superior Court judge to grant injunctive and similar equitable relief for violations of the Act and applicable regulations, did not preclude District of Columbia Depart-

ment of Health (DOH) administrative law judge (ALJ) from restoring status quo by ordering readmission of a patient who was discharged from Medicaid- and Medicare-certified nursing facility upon defective discharge notice. *Paschall v. D.C. Dep't of Health*, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

§ 44-1004.02. Mandamus.

A resident, a resident's representative, the Long-Term Care Ombudsman, or the licensee or administrator of a facility may bring an action in court for mandamus to order the Mayor or any District government agency to comply with subchapter III of this chapter, any rule issued by the Mayor pursuant to that subchapter, or any other District or federal law relevant to the operation of a facility or the care of its residents. Any person bringing an action under this section shall give the Mayor at least 5 days advance notice (excluding Saturdays, Sundays, and legal holidays) before the action is filed in court.

(Apr. 18, 1986, D.C. Law 6-108, § 402, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1452.

Legislative history of Law 6-108. — For

legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

§ 44-1004.03. Civil action for damages.

(a) A resident or resident's representative may bring an action in court to recover actual and punitive damages for any injury that results from a violation of subsection (b) of this section, subchapter III of this chapter, any rule issued by the Mayor pursuant to subchapter III of this chapter, or any standard or resident's right established pursuant to § 44-504(a)(3) and (4). Upon proof of a violation and subject to subsection (c) of this section, the resident shall be awarded 3 times the actual damages or \$100, whichever is greater, and may be awarded punitive damages of up to \$5,000.

(b) No owner, licensee, administrator, or employee of a facility shall take any

action that adversely affects a resident's rights, privileges, or living arrangement in retaliation for that resident, his or her representative, or the Long-Term Care Ombudsman having exercised a right conferred by District or federal law, court order, or order of the Mayor. In any action brought under subsection (a) of this section alleging retaliation, there shall be a presumption, rebuttable by a showing of clear and convincing evidence, that conduct is retaliatory if an owner, licensee, administrator, or facility employee attempts to discharge, transfer, or relocate a resident within 6 months after that resident or his or her representative:

- (1) Files an action for relief under this subchapter;
- (2) Files a petition for the appointment of a receiver or monitor under subchapter II of this chapter or otherwise participates in receivership or monitor proceedings against the facility;
- (3) Exercises a right to a hearing under subchapter III of this chapter; or
- (4) Makes an oral or written complaint against the facility or its owner, licensee, administrator, or staff to an agency or official of the District government, a representative from the Long-Term Care Ombudsman program, the owner, licensee, or administrator of the facility, or an employee of the facility.

(c) The defendant in an action brought under this section may plead as an affirmative defense that he, she, or it exercised reasonable care to prevent the injury for which liability is asserted; provided, however, that the adoption of policies and procedures to effect compliance with District law shall not alone be sufficient evidence to show the exercise of reasonable care.

(d) The first \$3,000 of a damages award recovered by a resident in any action brought under this section shall be excluded from consideration when determining that resident's eligibility for Medicaid, the amount of assistance he or she is entitled to under Medicaid, or his or her assets that the District may subject to a lien, setoff, or other legal process for the purpose of satisfying any indebtedness created by the receipt of Medicaid or other public assistance payments.

(Apr. 18, 1986, D.C. Law 6-108, § 403, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1453. legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For

§ 44-1004.04. Court costs and attorney's fees.

The court shall award costs and a reasonable attorney's fee to any plaintiff who prevails in an action brought under this chapter.

(Apr. 18, 1986, D.C. Law 6-108, § 404, 33 DCR 1510; Mar. 16, 1989, D.C. Law 7-218, § 602(e), 36 DCR 534.)

Prior Codifications. — 1981 Ed., § 32-1454. torical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see His- **Legislative history of Law 7-218.** — For legislative history of D.C. Law 7-218, see His-

torical and Statutory Notes following § 44-1001.01.

§ 44-1004.05. Rights independent and nonwaivable.

(a) Whenever the grounds for a resident's discharge, transfer, or relocation are being challenged, the remedies created by this subchapter shall not be available in lieu of those established by subchapter III of this chapter. In all other cases, a person authorized to bring an action under this subchapter may do so notwithstanding the availability of other remedies, and prior exhaustion of administrative remedies shall not be required.

(b) Any purported waiver of a person's right to bring an action under this subchapter shall be void.

(Apr. 18, 1986, D.C. Law 6-108, § 405, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1455. legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Legislative history of Law 6-108. — For

Subchapter V. Miscellaneous.

§ 44-1005.01. Rules.

The Mayor may issue rules, pursuant to subchapter I of Chapter 5 of Title 2, to carry out the purposes of this chapter.

(Apr. 18, 1986, D.C. Law 6-108, § 501, 33 DCR 1510.)

Prior Codifications. — 1981 Ed., § 32-1461.

Legislative history of Law 6-108. — For legislative history of D.C. Law 6-108, see Historical and Statutory Notes following § 44-1001.01.

Delegation of Authority. — Delegation of authority pursuant to Law 6-108, see Mayor's Order 87-47, February 17, 1987.

§ 44-1005.02. Privatization contracts, leases, provider agreements, and procedures requirements [Repealed].

Repealed.

(Apr. 18, 1986, D.C. Law 6-108, § 501a, as added Mar. 19, 1994, D.C. Law 10-79, § 3, 40 DCR 8696; Mar. 5, 1996, D.C. Law 11-98, § 502, 43 DCR 5.)

Prior Codifications. — 1981 Ed., § 32-1462.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 702 of Budget Support Temporary Act of 1995 (D.C. Law 11-78, January 26, 1996, law notification 43 DCR).

Legislative history of Law 11-98. — Law 11-98, the "Budget Support Act of 1995," was introduced in Council and assigned Bill No.

11-440, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1995, and December 5, 1995, respectively. Signed by the Mayor on December 26, 1995, it was assigned Act No. 11-181 and transmitted to both Houses of Congress for its review. D.C. Law 11-98 became effective on March 5, 1996.

CHAPTER 10A. NURSE STAFFING AGENCIES.

Sec.	Sec.
44-1051.01. Short title.	44-1051.11. Verification of credentials of nursing personnel.
44-1051.02. Definitions.	44-1051.12. Verification of credentials of aides.
44-1051.03. License required.	44-1051.13. Services by unauthorized personnel prohibited.
44-1051.04. Application for initial license.	44-1051.14. Disciplinary reporting requirements.
44-1051.05. Expiration of license.	44-1051.15. Operational procedures.
44-1051.06. License renewal; failure to renew.	44-1051.16. Inspections and enforcement.
44-1051.07. Denial, suspension, or revocation of license.	44-1051.17. Rules.
44-1051.08. Provisional and restricted licenses.	44-1051.18. Sanctions.
44-1051.09. Publication of license status.	
44-1051.10. Change in ownership or operation.	

§ 44-1051.01. Short title.

This chapter may be cited as the “Nurse Staffing Agency Act of 2003”.

(March 10, 2004, D.C. Law 15-74, § 1, 50 DCR 10914.)

Legislative history of Law 15-74. — Law 15-74, the “Nurse Staffing Agency Act of 2003”, was introduced in Council and assigned Bill No. 15-123, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 7, 2003,

and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-239 and transmitted to both Houses of Congress for its review. D.C. Law 15-74 became effective on March 10, 2004.

§ 44-1051.02. Definitions.

For the purposes of this chapter, the term:

(1) “Board” means the Board of Nursing established by § 3-1202.04.

(2) “Change of ownership” means:

(A) In the case of an unincorporated sole proprietorship, transfer of title and property to another party;

(B) In the case of a partnership, the removal, addition, or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable state law; and

(C) In the case of a corporation, the merger of the existing corporation into another corporation, or the consolidation of 2 or more corporations resulting in the creation of a new corporation, but not the merger of another corporation into the existing corporation nor the mere transfer of corporate stock.

(3) “Client” means a health care facility or agency, or an individual, that enters into an agreement or a contract with a nurse staffing agency for the provision or referral of nursing personnel, Home Health Aides, or Personal Care Aides.

(4) “Department” means the Department of Health.

(5) “Health care facility” or “health care agency” means any entity providing health care services that is defined or designated as a “facility” or “agency” pursuant to § 44-501(c). The term “health care facility” or “health care agency” includes hospitals, nursing homes, hospices, community resi-

dence facilities, maternity centers, ambulatory surgical facilities, renal dialysis facilities, and home care agencies.

(6) “Home Health Aide” means any individual who is qualified and authorized to perform home health aide services in accordance with Chapter 51 of Title 29 of the District of Columbia Municipal Regulations.

(7) “Nurse staffing agency” means any person, firm, corporation, partnership, or other business entity engaged in the business of providing or referring nursing personnel, to a health care facility or agency, or to an individual, for the purpose of rendering temporary nursing services within the District of Columbia. The term “nurse staffing agency” does not include:

(A) A nurse staffing program operated by a health care facility solely for the purpose of procuring or furnishing temporary or permanent nursing personnel for employment at that health care facility;

(B) An entity operating solely as a home care agency, as defined by § 44-501(a)(7); or

(C) Any nursing personnel providing or referring their own services to a health care facility or agency, or to an individual, without the direct or indirect assistance of a nurse staffing agency.

(8) “Nursing personnel” means any individual who is licensed by the District of Columbia Board of Nursing as a Licensed Practical Nurse or as a Registered Nurse, or any individual who is certified as a Certified Nurse Aide in accordance with Chapter 32 of Title 29 of the District of Columbia Municipal Regulations.

(9) “Personal Care Aide” means any individual who is qualified and authorized to perform personal care services in accordance with Chapter 50 of Title 29 of the District of Columbia Municipal Regulations.

(10) “Responsible party” means the employee or other affiliate of a nurse staffing agency who directs the nurse staffing agency’s day-to-day nurse staffing operation.

(March 10, 2004, D.C. Law 15-74, § 2, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.03. License required.

A nurse staffing agency shall be licensed by the Department before providing or referring any nursing personnel, Home Health Aides, or Personal Care Aides to a health care facility or agency, or to an individual, for the purpose of rendering temporary nursing services or related aide services within the District of Columbia.

(March 10, 2004, D.C. Law 15-74, § 3, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.04. Application for initial license.

A nurse staffing agency shall submit to the Department, as part of the agency's initial application for licensure:

- (1) The business name of the agency;
- (2) The addresses of the agency's registered business office, operations headquarters, and District of Columbia operations headquarters;
- (3) The telephone numbers of all offices listed in paragraph (2) of this subsection;
- (4) If the agency is a corporate entity, the entity's Certificate of Good Standing as a corporation;
- (5) The name of the agency's responsible party;
- (6) Any other information necessary to ensure compliance with the provisions of this chapter, as established by regulation; and
- (7) The initial licensure fee as established by regulation.

(March 10, 2004, D.C. Law 15-74, § 4, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.05. Expiration of license.

A license issued by the Department pursuant to this chapter shall expire one year from the date of initial issuance or most recent renewal, unless it is sooner terminated or renewed.

(March 10, 2004, D.C. Law 15-74, § 5, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.06. License renewal; failure to renew.

(a) A nurse staffing agency may obtain renewal of its license from the Department if the nurse staffing agency:

- (1) Meets all licensing requirements as established by this chapter and by regulations promulgated pursuant to this chapter; and
- (2) Submits to the Department the renewal licensure fee as established by regulation.

(b) If a nurse staffing agency fails to obtain renewal of its license, the nurse staffing agency shall, on or before the license expiration date, immediately stop providing and referring nursing personnel, Home Health Aides, and Personal Care Aides to health care facilities, health care agencies, and individuals.

(March 10, 2004, D.C. Law 15-74, § 6, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.07. Denial, suspension, or revocation of license.

The Department may deny, suspend, revoke, or refuse to renew a license for violation of any provision of this chapter or of the regulations promulgated pursuant to this chapter.

(March 10, 2004, D.C. Law 15-74, § 7, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.08. Provisional and restricted licenses.

(a) As an alternative to denial, suspension, revocation, or non-renewal of a license, the Department may:

(1) Issue a provisional license if the nurse staffing agency is taking appropriate ameliorative action in accordance with a mutually-agreed-upon timetable; or

(2) Issue a restricted license that prohibits the nurse staffing agency from accepting new clients or delivering certain specified services.

(b) The Department may issue a provisional license to a new nurse staffing agency to afford the Department time to compile and evaluate evidence pertaining to whether the new agency is capable of complying with the provisions of this chapter, regulations promulgated pursuant to this chapter, and other applicable law.

(c) A provisional license may be issued for a period not exceeding 90 days, and may be renewed not more than once.

(March 10, 2004, D.C. Law 15-74, § 8, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.09. Publication of license status.

The Department may make available to the public a roster of all nurse staffing agencies that are or have been licensed by it. The information published may include the name, address, and telephone number of the agency, as well as the agency's current licensure status.

(March 10, 2004, D.C. Law 15-74, § 9, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.10. Change in ownership or operation.

A nurse staffing agency shall notify the Department of any change in ownership, or in business name, address, telephone number, or responsible party, as required by § 44-1051.04, no later than 30 days after the change.

(March 10, 2004, D.C. Law 15-74, § 10, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.11. Verification of credentials of nursing personnel.

(a) Before initially providing or referring any nursing personnel to a health care facility or agency, or to an individual, for the purpose of rendering temporary nursing services within the District of Columbia, a nurse staffing agency shall:

(1) If the nursing personnel is a Licensed Practical Nurse or a Registered Nurse, obtain verification from the Board of Nursing that the nursing personnel is currently licensed;

(2) If the nursing personnel is a Certified Nurse Aide, obtain verification from the Department that the nursing personnel is currently certified and is not listed on the Nurse Aide Abuse Registry; and

(3) Compare the information obtained pursuant to paragraphs (1) or (2) of this subsection with a government-issued photographic identification document furnished by the nursing personnel, and ascertain that the information refers to that nursing personnel.

(b) On or before the date on which nursing personnel provided or referred by a nurse staffing agency must obtain renewal of his or her license or certification to remain licensed or certified, the nurse staffing agency shall verify that the nursing personnel provided or referred has obtained such renewal by obtaining verification of that fact from the Board of Nursing for a Licensed Practical Nurse and Registered Nurse, and from the Department for a Certified Nurse Aide.

(c) A nurse staffing agency shall create and retain written documentation of the verification processes performed pursuant to subsections (a) and (b) of this section.

(March 10, 2004, D.C. Law 15-74, § 11, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.12. Verification of credentials of aides.

Before initially providing or referring a Home Health Aide or a Personal Care Aide to a health care facility or agency, or to an individual, for the purpose of rendering temporary home health or personal care services within the District of Columbia, a nurse staffing agency shall verify and document that the individual Home Health Aide or Personal Care Aide provided or referred has received the necessary education and training for that position, as required by law.

(March 10, 2004, D.C. Law 15-74, § 12, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.13. Services by unauthorized personnel prohibited.

A nurse staffing agency shall not knowingly provide or refer nursing personnel to a health care facility or agency, or to an individual, for the purpose of rendering temporary nursing services within the District of Columbia, if the nursing personnel being provided or referred is not authorized to provide services as a Licensed Practical Nurse or as a Registered Nurse in accordance with Chapter 12 of Title 3, or is not authorized to provide services as a Certified Nurse Aide in accordance with Chapter 32 of Title 29 of the District of Columbia Municipal Regulations.

(March 10, 2004, D.C. Law 15-74, § 13, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.14. Disciplinary reporting requirements.

(a) If a nurse staffing agency knows of an action taken by, or of a condition affecting the fitness to practice of, a Licensed Practical Nurse or a Registered Nurse provided or referred by that agency that might be grounds for enforcement or disciplinary action under Chapter 12 of Title 3, the agency shall report the action or condition to the Board, with the exception that an agency is not required under this section to make a report that would be in violation of any federal or District of Columbia law concerning the confidentiality of alcohol and drug abuse treatment records.

(b) If a nurse staffing agency knows of an action taken by a Certified Nurse Aide provided or referred by that agency that might be grounds for listing that individual on the Nurse Aide Abuse Registry pursuant to Chapter 32 of Title 29 of the District of Columbia Municipal Regulations, the agency shall report the action to the Department.

(March 10, 2004, D.C. Law 15-74, § 14, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.15. Operational procedures.

A nurse staffing agency shall develop, document, and implement procedures for:

- (1) Selecting nursing personnel to be provided or referred by the agency;
- (2) Verifying and documenting the credentials of nursing personnel to be provided or referred by the agency;
- (3) Verifying employment references furnished to the agency by nursing personnel;
- (4) Assessing, verifying, and documenting the clinical experience and competency of nursing personnel before providing or referring them;
- (5) Selecting persons to be provided or referred as Home Health Aides or

Personal Care Aides, if the agency engages in providing or referring those kinds of personnel;

(6) Verifying and documenting the education and training of Home Health Aides or Personal Care Aides, if the agency engages in providing or referring those kinds of personnel;

(7) Tracking, responding to, and acting on complaints;

(8) Reporting to the Board an action taken by, or a condition affecting the fitness to practice of, a Licensed Practical Nurse or Registered Nurse provided or referred by the agency that might be grounds for enforcement or disciplinary action under Chapter 12 of Title 3, and reporting to the Department an action taken by a Certified Nurse Aide provided or referred by the agency that might be grounds for listing the individual on the Nurse Aide Abuse Registry;

(9) Verifying and documenting that nursing personnel, Home Health Aides, and Personal Care Aides provided or referred by the agency are in satisfactory health, and have received all health testing and immunizations recommended by the Centers for Disease Control and Prevention, or otherwise required by law or requested by the client, before being provided or referred to a health care facility or agency, or to an individual; and

(10) Verifying and documenting that nursing personnel, Home Health Aides, and Personal Care Aides provided or referred by the agency have satisfactorily completed all drug screening and all background checks required by law, including subchapter II of Chapter 5 of Title 44 and Chapter 47 of Title 22 of the District of Columbia Municipal Regulations, or requested by the client, before being referred to a health care facility or agency, or to an individual.

(March 10, 2004, D.C. Law 15-74, § 15, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.16. Inspections and enforcement.

(a) To verify compliance with this chapter or with regulations promulgated pursuant to this chapter, the Department is authorized to conduct inspections of a nurse staffing agency's offices and operations, and to obtain records and other documentation from a nurse staffing agency.

(b) In the course of conducting an inspection of a nurse staffing agency, the Department shall investigate:

(1) Whether all of the nursing personnel provided or referred by the agency to health care facilities or agencies, or to individuals, for the purpose of rendering temporary nursing services within the District of Columbia are currently licensed by the Board or certified by the Department, as required; and

(2) Whether the nurse staffing agency has developed, documented, and implemented the procedures required by § 44-1051.15.

(c) If the Department ascertains that any of the nursing personnel provided or referred by a nurse staffing agency are not licensed or certified, as required, or that the agency has not developed, documented, and implemented the

procedures required by § 44-1051.15, the Department shall take such corrective or enforcement action authorized by this chapter or by regulations promulgated pursuant to this chapter as it deems appropriate.

(March 10, 2004, D.C. Law 15-74, § 16, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

§ 44-1051.17. Rules.

The Mayor shall issue rules to implement the provisions of this chapter, including the establishment of:

- (1) Fees;
- (2) Procedures for license application, issuance, and renewal;
- (3) Procedures for regulation of nurse staffing agencies located outside the District of Columbia;
- (4) Requirements for maintenance of documentation and for submission of documentation to the Department;
- (5) Minimum standards for operation and continued licensure of nurse staffing agencies; and
- (6) Enforcement and hearing procedures.

(March 10, 2004, D.C. Law 15-74, § 17, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

“Nursing Staffing Agency Act of 2003”, see Mayor’s Order 2004-83, May 21, 2004 (51 DCR 5837).

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 15-74, the

§ 44-1051.18. Sanctions.

Civil fines, penalties, and related costs may be imposed against a nurse staffing agency for the violation of any provision of this chapter, of any regulation promulgated pursuant to this chapter, or of any other applicable District of Columbia or federal law. Procedures for adjudication and enforcement, and applicable fines, penalties, and costs, shall be those established by or pursuant to Chapter 18 of Title 2.

(March 10, 2004, D.C. Law 15-74, § 18, 50 DCR 10914.)

Legislative history of Law 15-74. — For Law 15-74, see notes following § 44-1051.02.

CHAPTER 11. PUBLIC BENEFIT CORPORATION.

*Subchapter I. Declaration of Policy and Legislative Findings**Subchapter II. General Provisions*

Sec.

44-1102.01 to 44-1102.20. [Repealed].

Subchapter III. Employee Incentive Programs

Sec.

44-1103.01 to 44-1103.03. [Repealed].

*Subchapter I. Declaration of Policy and Legislative Findings.***§ 44-1101.01. Continuation of rules and regulations. [Repealed].**

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 101, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-261.1.

Temporary Addition of Section. — Section 2 of D.C. Law 13-(Act 13-479) added a new § 44-1101.01, relating to council approval, to read as follows: § 44-1101.01. Council approval. “Notwithstanding any other law, any proposed action by the Public Benefit Corporation to (1) transition D.C. General Hospital from a full-service, acute-care hospital to a community-access hospital; or (2) remove or terminate the operation of the Level-1 trauma center currently located at D.C. General Hospital, shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed action, in whole or in part, by resolution within this 45-day review period, the proposed action shall be deemed approved.”

Section 5(b) of D.C. Law 13-(Act 13-479) provided that the act shall expire after 225 days of its having taken effect.

Sections 101 to 118 and 301 of D.C. Law 18-254 added sections to read as follows:

“Title I. Not-for-Profit Hospital Corporation Establishment.

“Sec. 101. Definitions.

“For the purposes of this act, the term:

“(1) ‘Board’ means the Board of Directors of the Not-for-Profit Hospital Corporation.

“(2) ‘Corporation’ means the Not-for-Profit Hospital Corporation established by section 102.

“(3) ‘Fund’ means the Not-for-Profit Hospital Corporation Fund established by section 103.

“(4) ‘Hospital’ means:

“(A) The acute care hospital on the site;

“(B) The hospital building on the site;

“(C) All furnishings, fixtures, equipment, supplies, and related amenities located in the acute care hospital and the hospital building; and

“(D) Any other operations located within the hospital building or on the site, and contracts, leases, or other agreements related to those operations.

“(5) ‘Site’ means the land comprised of approximately 17 acres at 1310 and 1350 Southern Avenue, S.E.

“Sec. 102. Establishment of the Not-for-Profit Hospital Corporation.

“(a) There is established as an instrumentality of the District government the Not-for-Profit Hospital Corporation, which shall have a separate legal existence within the District government.

“(b) The primary purpose of the Corporation shall be to:

“(1) Receive the land, improvements on the land, equipment, and other assets of the United Medical Center;

“(2) Operate and take all actions to ensure the continued operation of the hospital; and (3) Sell or otherwise transfer all or part of the hospital and site, if a qualified buyer is identified.

“Sec. 103. Not-for-Profit Hospital Corporation Fund.

“(a)(1) There is established as a nonlapsing fund the Not-for-Profit Hospital Corporation Fund. The Fund shall be comprised of:

“(A) Accounts receivable of the Corporation;

“(B) Transferred funds of the United Medical Center;

“(C) Funds obtained through payments from third-party payers, and other sources.

“(2) The Mayor may direct the Chief Financial Officer to deposit in the Fund any and all

other funds received by or on behalf of the Corporation or the hospital for the purpose of operating the Corporation, the hospital, and any other operations conducted by or through the Corporation on the site.

“(3) All funds deposited into the Fund and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

“(b) Disbursements from the Fund may be used for all purposes related to operating the Corporation, the hospital, and other operations on the site.

“Sec. 104. Board of Directors.

“(a)(1)(A) The Corporation shall be governed by a Board of Directors, which shall consist of 14 members, 11 of whom shall be voting members and 3 of whom shall be non-voting members.

“(B) Of the voting members, the Mayor shall appoint 6 members, with the advice and consent of the Council, and the Council shall appoint 3 members.

“(C) The Chief Financial Officer of the District of Columbia, or his or her designee, and a representative of the entity maintaining the largest collective bargaining agreement with the Corporation, with that representative not being an employee of the Corporation, shall serve as voting ex officio members.

“(D) The Chief Executive Officer of the Corporation and the Chief Medical Officer of the Corporation, and the President of the District of Columbia Hospital Association, or his or her designee, shall serve as non-voting ex officio members.

“(2) Members shall have business or management expertise in health-systems management or integrated care-delivery systems or experience as a:

- “(A) Practicing physician;
- “(B) Nursing executive;
- “(C) Finance officer;
- “(D) Labor manager; or
- “(E) Contract manager.

“(b)(A) The terms of the voting members of the initial Board shall be as follows:

“(i) Two members appointed by the Mayor and one member appointed by the Council shall serve 3-year terms;

“(ii) Two members appointed by the Mayor and one member appointed by the Council shall serve 2-year terms; and

“(iii) Two members appointed by the Mayor and one member appointed by the Council shall serve one-year terms.

“(B) All subsequent voting-member appointees shall serve 3-year terms.

“(c) The Mayor shall submit the names of the Mayor’s nominees to the Council within 10 days of the effective date of this act for a 45-day period of review. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed approved.

“(d) No fewer than 90 days before the expiration of a member’s term, the Mayor shall submit to the Council the name of a nominee to fill the vacancy. When a vacancy occurs for any reason other than expiration of a term, the Mayor shall submit the name of a nominee to the Council within 45 days after the vacancy occurs for a 45-day period of review. If the Council does not approve or disapprove the nomination, by resolution, within the 45-day review period, the nomination shall be deemed approved. A member appointed to fill a vacancy for an unexpired term shall serve only for the unexpired portion of the term, unless the member is reappointed for a new term.

“(e) A Board member whose term has expired may continue to serve until a new member is appointed or for 180 days, whichever first occurs.

“(f) The Board shall elect a chairperson from among the members who shall serve in that capacity for the length of his or her term or 2 years, whichever is shorter.

“(g) A Board member shall not be entitled to compensation but may be reimbursed for actual and necessary expenses incurred for performing his or her official duties. Unless prohibited by law, a Board member may engage in private employment, a profession, or a business.

“(h) A Board member shall not be held personally liable for an action taken in the course of his or her official duties and responsibilities.

“(i) The Mayor shall remove any Board member for misconduct or neglect of duty, as defined in the Corporation’s bylaws, or for other good cause, after notice to the Board member and the Board.

“(j) The Mayor shall immediately suspend any Board member charged with a misdemeanor or felony and shall remove the Board member if the member is found guilty of the charge.

“(k) The Board shall maintain regular contact with the Director of the Department of Health, or successor agency, and shall meet with the Director upon the Director’s request.

“Sec. 105. Governance of the Corporation.

“(a) The powers of the Corporation shall be vested in and exercised by the Board. The Board may take action at a meeting held at a time and place fixed by the bylaws. The Board shall adopt rules for conducting its meetings.

“(b)(1) The presence of 5 voting members shall constitute a quorum of the Board. A majority vote of the members present for a

quorum shall be necessary for the Board to take any official action.

"(2) A Board member shall be considered present for the purpose of establishing or maintaining a quorum either by being physically present at the site specified for the Board meeting or by being electronically present via a speaker telephone, web camera, or other device capable of transmitting the member's voice or voice and image to the Board members physically present and the Board members' voices or voices and images to the member employing electronic means to participate.

"(c) The Board shall hold an annual meeting to inform the public of its plans and programs. The Board shall provide notice of the meeting by publishing notice in the District of Columbia Register and a newspaper of general circulation in the District not less than 30 days before the date of the meeting.

"(d) The Board shall meet not less than once per month, at least 10 months each year. Board meetings shall comply with the requirements for open meetings pursuant to section 742 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).

"(e) The Corporation's fiscal year shall coincide with the fiscal year of the District government.

"(f) The Board shall appoint the Chief Executive Officer ("CEO") of the United Medical Center as CEO of the Corporation and to be in charge of the day-to-day affairs of the Corporation, including the hospital and other operations at the site. The Board may subsequently conduct a national search to fill the position of CEO. The CEO shall serve at the pleasure of the Board.

"(g) The Board may engage a hospital management company to assist in hospital operations and may contract or enter into leases with third parties to operate discrete facilities within the hospital or on the site.

"(h) The Board shall hold its first meeting no later than 7 days from the date of the appointment of 7 or more members.

"(i) The Board shall determine the qualifications and credentialing for health care professionals to receive the privilege of practicing within a health-care facility under the Corporation's jurisdiction and make reasonable policies and procedures for the conduct of a person on the staff of a facility within the Corporation's jurisdiction, consistent with District law.

"Sec. 106. Powers of the Corporation.

"The Corporation shall have the powers to:

"(1) Sue and be sued in its corporate name;

"(2) Adopt a corporate seal and alter the seal at its pleasure;

"(3) Adopt, amend, and repeal bylaws governing the manner in which it may conduct busi-

ness and how the powers vested in it may be exercised;

"(4) Borrow money for any of its corporate purposes pursuant to section 116 and as may be permitted under the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 passim), and other laws of the District; provided, that the Corporation's debts shall not be subject to and shall not be backed by the full faith and credit of the District of Columbia;

"(5) Provide for the payment of obligations as may be permitted under the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 passim), and other laws of the District;

"(6) Establish policies for contracting and procurement that are consistent with the principles of competitive procurement and, subject to District law, make and execute contracts, leases, and all other agreements or instruments necessary and appropriate for the exercise of its powers and the fulfillment of its corporate purposes;

"(7) Subject to Council approval by resolution, acquire, construct, and dispose of real or personal property of every kind, including a health-care facility or an interest in a health-care facility for its corporate purposes;

"(8) Operate, manage, superintend, maintain, repair, equip, and control a health-care facility under its jurisdiction, including seeking all necessary licenses, certifications, or other permits and establishing and collecting fees, rentals, or other charges, including reimbursement allowances for the sale, lease, or sublease of any health-care facility;

"(9) Provide health and medical services to the public directly or by agreement with a person, firm, or private or public corporation or association;

"(10) Establish policies governing admissions and health and medical services and fees and other charges, including reimbursement allowances for providing health and medical services;

"(11) Provide and maintain resident physician and intern medical services, as appropriate, and sponsor and conduct research, development, planning, evaluation, educational, and training programs, as appropriate;

"(12) Provide additional services and adopt a schedule of appropriate charges for additional services consistent with its corporate purposes;

"(13) Employ officers, executives, and management personnel who may formulate or participate in the formulation of the plans, policies, and standards or who may administer, manage, or operate the Corporation, fix their qualifications, and prescribe their duties and other terms of employment, compensation, and benefits; except, that such personnel shall be excluded from collective bargaining representa-

tion and employ other personnel as may be necessary;

“(14) Subject to the requirements of section 115 of the District of Columbia Appropriations Act, 2003, approved February 20, 2003 (117 Stat. 123; D.C. Official Code § 1-329.01), and section 446b of the District of Columbia Home Rule Act, approved October 16, 2006 (120 Stat. 2040; D.C. Official Code § 1-204.46b), apply for and receive donations, gifts, grants of money, real and personal property, services, or other aid;

“(15) Maintain or purchase insurance, including errors and omissions insurance, for the Board and officers of the Corporation, or obtain indemnification against losses or liabilities of the Corporation;

“(16) Enter into agreements with another organization, public or private, for goods and services as needed for its corporate purposes;

“(17) Request and recommend that the Chief Financial Officer of the District of Columbia invest the Corporation's funds and make recommendations to the Chief Financial Officer of the District of Columbia how to administer funds;

“(18) Retain or employ auditors, engineers, and private consultants by contract for rendering professional, management, or technical services and advice;

“(19) Subject to District law, engage in a joint venture and participate in a network, alliance, consortium pool, or other cooperative arrangement with a public or private entity; and

“(20) Do any and all things necessary and proper to carry out its corporate purposes.

“Sec. 107. Transfer of assets under Deed of Trust.

“Upon foreclosure under the Deed of Trust, Security Agreement, Fixture Filing and Restrictive Covenants signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007, or upon any other transfer of assets, the Mayor is authorized to transfer all of the assets, including cash, accounts receivable, and real and personal property, of United Medical Center to the Corporation.

“Sec. 108. Personnel administration.

“(a) The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1978 (D.C. Law 2-139; D.C. Official Code § 1-601.01 et seq.), shall not apply to employees of the Corporation.

“(b) Within 6 months of the first meeting of the Board, the Corporation shall promulgate policies, practices, and procedures relating to terms and conditions of employment for personnel employed by the Corporation. Until the Corporation establishes a personnel system subject to applicable laws, the personnel system of the United Medical Center existing the day prior to the effective date of this act shall

continue to apply to the Corporation and its employees.

“(c) Subject to federal and District law, the Corporation shall assume and be bound by all personnel contracts and existing collective bargaining agreements with labor organizations that represent employees transferred to the Corporation.

“(d) This section shall not to be construed to limit the right of the Board to reorganize, restructure, reclassify, or eliminate positions.

“(e) The Corporation shall give a hiring preference to qualified District residents.

“(f) The Corporation shall have independent personnel authority, including the authority to establish its own personnel system, and shall not be subject to the District of Columbia Government Comprehensive Merit Personnel Act, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 et seq.), or its implementing regulations.

“(g) The Corporation, with advice from the Chief Executive Officer, shall develop a personnel system that includes rules prohibiting an employee from having a direct or indirect financial interest that conflicts with, or would appear to conflict with, the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

“(h) The Board members and the CEO shall not have any interest, direct or indirect, as principal, surety, or otherwise in contract, where the expense or consideration of the contract is payable from Corporation funds.

“Sec. 109. Budget.

“The Board shall submit its proposed fiscal year 2011 operating budget and each subsequent operating budget for the Corporation to the Mayor on the date that District departments and agencies are required to submit proposed budgets to the Mayor.

“Sec. 110. Transfer of employees.

“(a) The employees of United Medical Center shall be transferred to the Corporation with the same rights and obligations they enjoyed as employees of the United Medical Center.

“(b) The employees transferred from the United Medical Center to the Corporation shall not be governed by the District of Columbia Government Comprehensive Merit Personnel Act, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 et seq.), or its implementing regulations (“CMPA”) and shall not enjoy any rights, benefits, or obligations afforded by the CMPA.

“Sec. 111. Procurement law inapplicable.

“(a) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.), and its implementing regulations shall not apply to the Corporation; except, that the Corporation shall be required to comply with the requirements regarding multiyear

contracts and contracts in excess of \$1 million during a 12-month period pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 105a of the District of Columbia Procurement Practices Act of 1985, effective March 8, 1991 (D.C. Law 8-257; D.C. Official Code § 2-301.05a).

“(b) Procurement policies employed by the United Medical Center on the day prior to the effective date of this act shall continue until the Corporation develops new procurement policies.

“Sec. 112. Exemption from taxation.

“The assets and income of the Corporation shall be exempt from taxation by the District government.

“Sec. 113. Reports to the Mayor and the Council.

“On or before December 29 of each year, the Corporation shall submit to the Mayor and the Council a report that sets forth for the prior fiscal year its operations and accomplishments, revenues and expenses, assets and liabilities at the end of the fiscal year, and the status of reserves, depreciation, and special, sinking, or other funds.

“Sec. 114. Representation and indemnification.

“(a) The officers and employees of the Corporation shall not be considered District government employees for purposes of the District of Columbia Employee Non-liability Act, approved July 14, 1960 (74 Stat. 519; D.C. Official Code § 2-411 et seq.), and the District of Columbia shall not be liable for any acts or occurrences of the Corporation regardless of whether the Corporation purchases insurance or whether purchased insurance covers any act or omission of an act.

“(b) The District of Columbia may, upon request by the Corporation and at the discretion of the Attorney General for the District of Columbia “(Attorney General”, provide representation through the Office of the Attorney General to the Corporation and its officers and employees for legal matters related to their official duties.

“(c) The Corporation may retain outside counsel, other than the Attorney General, at its own expense to provide representation for the Corporation and its officers and employees in actual or anticipated litigation related to their official duties and functions or in any other legal proceeding, lawsuit, grievance, or arbitration filed against the Corporation, its officers, or its employees.

“(d) An action other than an action for medical negligence or malpractice may not be maintained against the Corporation for unliquidated damages to persons or property unless, within 6 months after the injury or damage was sustained, the claimant, his agent, or attorney has

given notice in writing to the CEO of the approximate time, place, cause, and circumstances of the injury or damage.

“(e) The District of Columbia and its officers and employees shall not be liable for and may not be made a party to any lawsuits or claims arising from the operation of the Corporation.

“Sec. 115. General Counsel.

“(a) The Corporation may have a General Counsel who shall:

“(1) Be appointed by the CEO;

“(2) Be an attorney admitted in good-standing to the practice of law in the District of Columbia;

“(3) Be qualified by experience and training to advise the Corporation with respect to legal issues related to its powers and duties;

“(4) Have an attorney-client relationship with the Corporation; and

“(5) Advocate vigorously for the positions of the Corporation on legal issues.

“(b) The General Counsel, with the consent of the CEO, may employ staff attorneys and other personnel.

“Sec. 116. Debts and borrowing.

“(a) The Corporation is authorized by the Council pursuant to section 490(a)(6) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 809; D.C. Official Code § 1-204.90(a)(6)), to incur debt, including lines of credit, to carry out the authorized purposes of the Corporation. The Corporation may, at any time, and from time to time, enter into debt obligations, by resolution of the Board. Debt of the Corporation shall be payable solely from the revenues of the Corporation from whatever source derived and shall not be issued in the form of obligations maturing longer than 5 years, including renewals. The Corporation shall have the power to incur indebtedness regardless of whether the interest payable by the Corporation or the income derived by the holders of the evidence of the indebtedness is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxable income on the recipients. No official, employee, or agent of the Corporation shall be held personally liable solely because a debt instrument is issued.

“(b) Any debt created pursuant to this section shall not:

“(1) Be considered general obligation debt of the District for any purpose, including the limitation on the annual aggregate limit on debt of the District of Columbia under section 603(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.03(b));

“(2) Constitute a lending of the public credit for private undertakings for purposes of section 602(a)(2) of the District of Columbia Home Rule

Act, approved December 24, 1973 (87 Stat. 814; D.C. Official Code § 1-206.02(a)(2));

"(3) Be a pledge of or involve the full faith and credit of the District of Columbia, other than with respect to any dedicated taxes; or

"(4) Constitute a debt of the District.

"Sec. 117. Continuation of privileges to practice.

"(a) A health-care professional who has the privilege of practicing at the United Medical Center as of the effective date of this act shall retain practice privileges with the Corporation until the:

"(1) Privilege expires;

"(2) Board alters or amends the privilege; or

"(3) Board revokes the privilege.

"(b) The Board shall retain the policies regarding determining the qualifications for health-care professionals to receive the privilege of practicing that existed at United Medical Center on the day prior to the effective date of this act until the Corporation replaces the policies pursuant to section 105(i).

"Sec. 118. The Chief Financial Officer of the District of Columbia shall exercise authority over the Corporation consistent with section 424 of the District of Columbia Home Rule Act, approved April 17, 1995 (109 Stat. 142; D.C. Official Code §§ 1-204.24a, 1-204.24b, and 1-204.24c)."

"Title III. General Provisions.

"Sec. 301. Applicability.

"Title I of this act shall apply upon a foreclosure under the Deed of Trust, Security Agreement, Fixture Filing, and Restrictive Covenants, signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007, or other voluntary transfer of assets covered by the Deed of Trust, Security Agreement, Fixture Filing, and Restrictive Covenants signed by CMC Realty, LLC and Capital Medical Center, LLC on November 7, 2007."

Section 303(b) of D.C. Law 18-254 provided that the act shall expire after 225 days of its having taken effect.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-345 added subsec. (i) to section 108 of D.C. Law 18-254 to read as follows:

"(i) The Corporation may retain an independent contractor to deliver hospital services, except for financial services provided by the Office of the Chief Financial Officer. As part of the hospital services a contractor provides, the contractor may manage, supervise, evaluate, and propose disciplinary action for government Hospital employees, except for employees reporting to the Chief Financial Officer of the District of Columbia, subject to the following limitations:

"(1) The Corporation determines, in writing, that the contractor is providing services to the Corporation and that it is necessary for the

operation of the hospital, or an affected department of the hospital, for the contractor to supervise, manage, evaluate, and propose disciplinary action for the affected employees.

"(2) In exercising authority to supervise, manage, evaluate, and propose disciplinary action, the contractor shall comply with all Hospital human resource policies, personnel contracts, and collective-bargaining agreements.

"(3) A contractor's proposal for disciplinary action shall not become final unless approved by the Chief Executive Officer of the Hospital.

"(4) The Hospital shall not be responsible for the contractor's negligence or misconduct related to managing or supervising hospital employees."

Section 4(b) of D.C. Law 18-345 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 19-11 rewrote subsec. (f) to read as follows:

"(f) The Mayor shall designate a chairperson from among the members who shall serve in that capacity at the pleasure of the Mayor."

Section 4(b) of D.C. Law 19-11 provided that the act shall expire after 225 days of its having taken effect.

"(i) The Corporation may retain an independent contractor to deliver hospital services, except for financial services provided by the Office of the Chief Financial Officer. As part of the hospital services a contractor provides, the contractor may manage, supervise, evaluate, and propose disciplinary action for government Hospital employees, except for employees reporting to the Chief Financial Officer of the District of Columbia, subject to the following limitations:

"(1) The Corporation determines, in writing, that the contractor is providing services to the Corporation and that it is necessary for the operation of the hospital, or an affected department of the hospital, for the contractor to supervise, manage, evaluate, and propose disciplinary action for the affected employees.

"(2) In exercising authority to supervise, manage, evaluate, and propose disciplinary action, the contractor shall comply with all Hospital human resource policies, personnel contracts, and collective-bargaining agreements.

"(3) A contractor's proposal for disciplinary action shall not become final unless approved by the Chief Executive Officer of the Hospital.

"(4) The Hospital shall not be responsible for the contractor's negligence or misconduct related to managing or supervising hospital employees."

Emergency legislation. — For temporary addition of Chapter 2A, see §§ 101-220 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), §§ 101-220 of the Health and Hospitals Public Benefit Corpo-

ration Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), §§ 101-220 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and §§ 101-220 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary (90 day) additions, see §§ 101 to 118, 301 of Not-for-Profit Hospital Corporation Establishment Emergency Amendment Act of 2010 (D.C. Act 18-476, July 7, 2010, 57 DCR 6937).

For temporary (90 day) additions, see §§ 101 to 118, 301 of Not-for-Profit Hospital Corporation Establishment Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-541, October 4, 2010, 57 DCR 9615).

For temporary (90 day) addition of sections, see §§ 101 to 118 and 301 of Not-for-Profit Hospital Corporation Establishment Second Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-668, December 28, 2010, 58 DCR 106).

For temporary (90 day) amendment of section 108 of D.C. Act 18-541, see § 2 of Not-for-Profit Hospital Corporation Personnel Administration Emergency Amendment Act of 2010 (D.C. Act 18-669, December 28, 2010, 58 DCR 118).

For temporary (90 day) amendment of section 108 of D.C. Law 18-254, see § 3 of Not-for-Profit Hospital Corporation Personnel Administration Emergency Amendment Act of 2010 (D.C. Act 18-669, December 28, 2010, 58 DCR 118).

For temporary (90 day) amendment of section 104(f) of D.C. Law 18-254, see § 2 of

Not-for-Profit Hospital Corporation Board Chairperson Designation Emergency Amendment Act of 2011 (D.C. Act 19-40, March 21, 2011, 58 DCR 2627).

For temporary (90 day) amendment of sections, see §§ 101 to 118 of Not-for-Profit Hospital Corporation Establishment Emergency Amendment Act of 2011 (D.C. Act 19-73, June 8, 2011, 58 DCR 5080).

For temporary (90 day) amendment of sections, see §§ 101 to 118 of Not-for-Profit Hospital Corporation Establishment Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-128, August 1, 2011, 58 DCR 6772).

Legislative history of Law 11-212. — Law 11-212, the “Health and Hospitals Public Benefit Corporation Act of 1996,” was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became law on April 9, 1997.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Mayor's Orders. — Transfer of Jurisdiction of Real Property and Other Assets Under the Jurisdiction of the Mayor to the Not-For Profit Hospital Corporation, see Mayor's Order 2010-115, July 16, 2010 (57 DCR 6207).

Amendment of Mayor's Order 2010-115, dated July 9, 2010: Transfer of Jurisdiction of Real Property and Other Assets Under the Jurisdiction of the Mayor to the Not-For-Profit Hospital Corporation, see Mayor's Order 2010-117, July 16, 2010 (57 DCR 6210).

Subchapter II. General Provisions.

§ 44-1102.01. Definitions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 201, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.1.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.02. Establishment of the District of Columbia Health and Hospitals Public Benefit Corporation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 202, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.2.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and

December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Editor’s notes. — Chief Procurement Officer qualification: Section 2(c) of D.C. Law 12-xxx (D.C. Act 12-249) provided that nothing in that act shall affect the operations of the District of Columbia Health and Hospitals Public Benefit Corporation pursuant to this chapter.

§ 44-1102.03. Board of Directors; appointment. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 203, 43 DCR 4962; Oct. 8, 1997, D.C. Law 12-43, § 2(a), 44 DCR 5763; June 12, 1999, D.C. Law 12-285, § 4(a), 46 DCR 1355; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.3.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary amendment of section, see § 2(a) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board promulgations, and conditional Approval of Organizational and Operational Plan Emergency Amendment Act of 1997 (D.C. Act 12-137, September 30, 1997, 44 DCR 5765), and see § 2(a) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-242, January 13, 1998, 45 DCR 638).

For temporary (90-day) amendment of section, see § 4(a) of the Confirmation Act Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-92, June 15, 1999, 46 DCR 5330).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see His-

torical and Statutory Notes following § 44-1101.01.

Legislative history of Law 12-43. — Law 12-43, the “CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Approval of Organizational and Operational Plan Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-109, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 3, 1997, and June 17, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-127 and transmitted to both Houses of Congress for its review. D.C. Law 12-43 became effective on October 8, 1997.

Legislative history of Law 12-285. — Law 12-285, the “Confirmation Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-261, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on Nov. 10, 1998, and Dec. 1, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-622 and transmitted to

both Houses of Congress for its review. D.C. Law 12-285 became effective on June 12, 1999.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.04. Governance of the Corporation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 204, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.4.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary delay of the effective date of § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(c) of the Health and Hospitals Public Benefit corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937, § 501(c), and the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093, and § 501(c) of

the Health and Hospitals Public Benefit Corporation Second congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Effective date. — Section 501(c) of the D.C. Law 11-212 provided that § 402 of the act shall become effective upon the first meeting of the Board pursuant to § 44-1102.04.

§ 44-1102.05. Powers of the Corporation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 205, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.5.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.06. Health and Hospitals Public Benefit Corporation Fund. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 206, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.6.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.07. Transfer of functions to the Corporation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 207, 43 DCR 4962; Oct. 8, 1997, D.C. Law 12-43, § 2(b), 44 DCR 5763; Mar. 20, 1998, D.C. Law 12-60, § 801, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-264, § 55, 46 DCR 2118; Apr. 27, 1999, D.C. Law 12-265, § 5, 46 DCR 2096; Oct. 20, 1999, D.C. Law 13-38, § 1602(a), 46 DCR 6373; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.7.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 801 of the Fiscal Year 1998 Revised Budget Support Temporary Act of 1997 (D.C. Law 12-59, March 20, 1998, law notification 45 DCR 2094).

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary amendment of section, see § 801 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196), and see § 801 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

For temporary amendment of section, see § 2(b) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board promulgations, and conditional Approval of Organizational and Operational Plan Emergency Amendment Act of 1997 (D.C. Act 12-137, September 30, 1997, 44 DCR 5765), and see § 2(b) of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-242, January 13, 1998, 45 DCR 638).

For temporary (90-day) amendment of section, see § 4 of the Establishment of Council Contract Review Criteria and Budget Support Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-47, April 6, 1999, 46 DCR 5481).

For temporary (90-day) amendment of section, see § 1602(a) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90 day) addition of § 44-1102.07a, see § 2 of the District of Columbia Health and Hospitals Public Benefit Corporation Emergency Amendment Act of 2000 (D.C. Act 13-454, November 7, 2000, 47 DCR 9413).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 12-43. — For legislative history of D.C. Law 12-43, see His-

torical and Statutory Notes following § 44-1101.01.

Legislative history of Law 12-60. — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 8, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Editor's notes. — Review and approval of the Organizational and Operational Plan for the D.C. Health and Hospitals Public Benefit Corporation: For approval of the Organizational and Operational Plan for the District of Columbia Health and Hospitals Public Benefit Corporation, on an emergency basis; provided, that the Chief Financial Officer certifies that the Organizational and Operational Plan is consistent with the District of Columbia Financial Plan and Budget, see § 3 of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Emergency Amendment Act of 1997 (D.C. Act

12-137, September 30, 1997, 44 DCR 5765), and see § 3 of the CFO Membership on the Health and Hospitals Public Benefit Corporation Board, Council Review of Board Promulgations, and Conditional Approval of Organizational and Operational Plan Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-242, January 13, 1998, 45 DCR 638).

Approval of Organizational and Operational Plan: Section 3 of D.C. Law 12-43 provided that the Council has reviewed and approves the Organizational and Operational Plan for the District of Columbia Health and Hospitals Public Benefit Corporation; provided, that the Chief Financial Officer certifies that the Organizational and Operational Plan is consistent with the District of Columbia Financial Plan and Budget.

District of Columbia Health and Hospitals Public Benefit Corporation Independent Personnel Regulations Approval Resolution of 1998: Pursuant to Resolution PR 12-695, deemed approved on June 19, 1998, the Council approved the proposed Independent Personnel Regulation, recommended by the Board of Directors of the PBC and transmitted to Council on March 23, 1998.

District of Columbia Health and Hospitals Public Benefit Corporation Independent Personnel Regulations Approval Resolution of 1998: Pursuant to Resolution PR 12-696, effective June 19, 1998, the Council approved the Independent Personnel Regulations submitted by the District of Columbia Health and Hospitals Public Benefit Corporation (PBC).

§ 44-1102.08. Personnel Administration. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 208, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.8.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.09. Advisory board establishment. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 209, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.9.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.10. Submission of budgets. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 210, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.10.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.11. Conflict of interest. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 211, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.11.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.12. Procurement law inapplicable. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 212, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.12.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.13. Exemption from taxation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 213, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.13.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.14. Delegation of Council authority to issue bonds. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 214, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.14.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(b) of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR

4937), § 501(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), and § 501(b) of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public

Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Effective date. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in title III of the act or of substantially similar legislation.

Editor's notes. — Council authority to delegate broadened: Section 11508 of Pub. L. 105-33, 111 Stat. 773, gave Council broad authority to delegate its power to issue revenue bonds.

§ 44-1102.15. Power of the Corporation to issue bonds, notes, and other obligations. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 215, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.15.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

torical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Effective date. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in title III of the act or of substantially similar legislation.

Editor's notes. — Council authority to delegate broadened: Section 11508 of Pub. L. 105-33, 111 Stat. 773, gave Council broad authority to delegate its power to issue revenue bonds.

§ 44-1102.16. Terms for sale of bonds; additional bond and note provisions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 216, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.16.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Effective date. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in title III of the act or of substantially similar legislation.

§ 44-1102.17. District pledges. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 217, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.17.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary delay of the effective date of §§ 214-217 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997, see § 601(b) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Effective date. — Section 501(b) of D.C. Law 11-212 provided that §§ 214 through 217 of the act shall take effect upon the enactment by Congress of the legislation proposed in title III of the act or of substantially similar legislation.

§ 44-1102.18. Reports of the Corporation. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 218, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.18.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.19. Representation and indemnification. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 219, 43 DCR 4962; Oct. 20, 1999, D.C. Law 13-38, § 1602(b), 46 DCR 6373; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.19.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

For temporary (90-day) amendment of section, see § 1602(b) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) authorization of application date of section, see § 1603 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 13-38. — For Law 13-38, see notes following § 44-1102.07.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Editor's notes. — D.C. Law 13-38, title XVI, § 1603, provided: "Sec. 1603. Applicability date. Section 1602(b) of this title shall be applicable from the date of the Board's first meeting under section 204(h) of the Health and Hospitals Public Benefit Corporation Act of 1996,

effective April 9, 1997 (D.C. Law 11-212; D.C. Code § 32-262.4(h) [§ 44-1102.04(h), 2001 Ed.]”.

§ 44-1102.19a. Repayment of funds. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 219a, 43 DCR 4962, as added Oct. 20, 1999, D.C. Law 13-38, § 1602(c), 46 DCR 6373; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Emergency legislation. — For temporary (90-day) amendment of section, see § 1602(c) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — For Law 13-38, see notes following § 44-1102.07.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1102.20. Pending administrative proceedings. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 220, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-262.20.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

Subchapter III. Employee Incentive Programs.

§ 44-1103.01. Easy out retirement incentive program and early out retirement incentive program. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 403, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-263.1.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1103.02. Voluntary severance incentive program. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 404, 43 DCR 4962; Apr. 20, 2000, D.C. Law

13-91, § 147, 47 DCR 520; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-263.2.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see His-

torical and Statutory Notes following § 44-1101.01.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 46-201.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

§ 44-1103.03. Prohibition on reemployment with the District government. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-212, § 405, 43 DCR 4962; July 12, 2001, D.C. Law 14-18, § 9(a), 48 DCR 4047.)

Prior Codifications. — 1981 Ed., § 32-263.3.

Emergency legislation. — For temporary addition of chapter, see note to § 44-1101.01.

Legislative history of Law 11-212. — For

legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1101.01.

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 44-401.

CHAPTER 12. SUBSTANCE ABUSE TREATMENT AND PREVENTION.

Sec.	Sec.
44-1201. Definitions.	44-1205. Financial assistance program.
44-1202. Eligibility for treatment for substance abuse.	44-1206. Substance abuse prevention campaign.
44-1203. Establishment of substance abuse treatment facility.	44-1207. Fees and fines; rules.
44-1203.01. Privatization of residential substance abuse treatment.	44-1208. Limitations on benefits.
44-1204. Certification requirements.	44-1209. Impact on insurance coverage.
	44-1210. Appropriations.

§ 44-1201. Definitions.

- (1) "District" means the District of Columbia.
- (2) "Drug" means any of the controlled substances enumerated in § 48-902.04, 48-902.06, 48-902.08, 48-902.10, or 48-902.12.
- (3) "Mayor" means the Mayor of the District of Columbia.
- (4) "Qualified health professional" means a person licensed to practice in the District as a physician, psychiatrist, registered nurse, or independent clinical social worker, pursuant to Chapter 12 of Title 3.
- (5) "Resident" means any person who lives in the District voluntarily and not for a temporary purpose and has no intention of presently removing himself or herself from the District. Temporary absence from the District, with subsequent returns to the District, or intent to return when the purposes of the absence have been accomplished shall not interrupt continuity of residence. For the purposes of this chapter, residency shall not depend upon the reason that the individual entered the District except that it may bear on whether he or she is in the District for a temporary purpose.
- (6) "Substance abuse" means a pattern of pathological use of a drug or alcohol that causes impairment in social or occupational functioning or produces physiological dependency evidenced by physical tolerance or physical symptoms when the drug or alcohol is not used.
- (7) "Treatment facility" means the substance abuse treatment facility established pursuant to § 44-1203.

(Mar. 15, 1990, D.C. Law 8-80, § 2, 36 DCR 8469.)

Prior Codifications. — 1981 Ed., § 32-1601.

Legislative history of Law 8-80. — Law 8-80, "District of Columbia Substance Abuse Treatment and Prevention Act of 1989," was introduced in Council and assigned Bill No. 8-403, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 7, 1989, and November 21, 1989, respectively. Signed by the Mayor on December 12, 1989, it was assigned Act No. 8-124 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 8-80, the "D.C. Substance Abuse Treatment and Prevention Act of 1989," see Mayor's Order 91-96, June 5, 1991.

Delegation of authority pursuant to D.C. Law 8-80, the "District of Columbia Substance Abuse Treatment and Prevention Act of 1989," see Mayor's Order 98-87, May 29, 1998 (45 DCR 3981).

§ 44-1202. Eligibility for treatment for substance abuse.

(a) Each District resident who meets the requirements of this section shall be eligible for treatment for substance abuse at the treatment facility, regardless of his or her ability to pay, subject to the restriction in § 44-1208, if the resident:

(1) Applies for treatment or is referred for treatment by a court of competent jurisdiction; and

(2) Has been examined by a qualified health professional who has determined that the individual needs treatment for substance abuse in a nonhospital residential setting.

(b) Any minor, pregnant woman, or the parent, guardian, or other person who has legal custody of a minor and who meets the requirements of this section shall have priority for admission to the treatment facility over any single adult who does not have a minor child.

(c) The determination of an individual's need for treatment may be made by a qualified health professional on duty at the treatment facility or by any other qualified health professional who has examined the individual prior to the individual's application or referral for admission.

(Mar. 15, 1990, D.C. Law 8-80, § 3, 36 DCR 8469.)

Prior Codifications. — 1981 Ed., § 32-1602.

legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

Legislative history of Law 8-80. — For

§ 44-1203. Establishment of substance abuse treatment facility.

(a) Within one year from March 15, 1990, the Mayor shall establish a comprehensive substance abuse treatment facility to provide residential and outpatient treatment for persons who suffer from substance abuse, regardless of a person's ability to pay.

(b) The treatment facility shall be under the management of a director who shall be a qualified health professional appointed by the Mayor.

(c) The treatment facility shall have an initial space and staff capacity to admit at least 250 individuals for inpatient treatment and provide appropriate follow-up treatment on an outpatient basis, except that a minimum of 150 additional beds shall be authorized if federal funds are available to fund the additional beds. The treatment facility subsequently shall be expanded based upon the need and the availability of funds.

(d) The treatment facility shall be centrally managed, but may be physically located at more than one site, if the director determines that separate sites are necessary to provide the most effective treatment.

(e) The treatment facility shall be subject to the certification requirements established by § 44-1204.

(Mar. 15, 1990, D.C. Law 8-80, § 4, 36 DCR 8469.)

Section references. — This section is referred to in §§ 44-1201, 44-1203.01, and 44-1207.

Prior Codifications. — 1981 Ed., § 32-1603.

Legislative history of Law 8-80. — For legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

§ 44-1203.01. Privatization of residential substance abuse treatment.

(a) Notwithstanding any provision of § 44-1203, the Mayor shall contract out the operation of the substance abuse Residential Short Stay and Detoxification Facilities programs that are currently operated by the Addiction, Prevention, and Recovery Administration (“APRA”) and, when appropriate, priority shall be given to locating such facilities on the campus of the D.C. General Hospital. The affected employees of APRA shall be given the opportunity to compete in this privatization, which shall be carried out in accordance with §§ 2-301.05b and 2-301.05c.

(b) Any amount of funding necessary for costs of severance pay related to the contracting out of the operation of the substance abuse Residential Short Stay and Detoxification Facilities program shall be paid from the administrative costs of the Addiction, Prevention, and Recovery Administration. No money for severance pay related to the contracting out shall be taken from any program funding allocated for substance abuse treatment services, including the \$3 million increase allocated by the Council for community based substance abuse treatment services.

(Mar. 15, 1990, D.C. Law 8-80, § 4a, 36 DCR 8469, as added Oct. 20, 1999, D.C. Law 13-38, § 1702, 46 DCR 6373.)

Emergency legislation. — For temporary (90-day) authorization of citation of section, see § 1701 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) addition of section, see § 1702 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — Law 13-38, the “Service Improvement and Fiscal Year 2000 Budget Support Act of 1999,” was

introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Short title. — Section 1701 of D.C. Law 13-38 provided: “This title may be cited as the ‘Substance Abuse Treatment and Prevention Amendment Act of 1999.’”

§ 44-1204. Certification requirements.

(a) Any public or private person, partnership, corporation, association, charitable organization, or other legally-constituted entity, whether for profit or not for profit, that provides or offers to provide nonhospital residential or outpatient treatment for substance abuse shall be certified by the Mayor as a condition of operation and shall operate in compliance with the standards necessary to maintain certification. The Mayor may certify a facility as

qualified to provide nonhospital residential treatment, outpatient treatment, or both.

(b) To qualify for certification, a substance abuse treatment facility shall demonstrate to the satisfaction of the Mayor that the treatment facility meets the standards established by § 31-3106(c)(1), (2), and (3).

(c) In addition to the requirement set forth in subsection (b) of this section, a substance abuse treatment facility that offers or proposes to offer nonhospital residential treatment shall demonstrate to the satisfaction of the Mayor that it has the staff, space, and financial resources to provide each patient with a sufficient number of consecutive days of nonhospital residential care to treat the substance abuse disorder that the patient experiences.

(d) In addition to the requirement set forth in subsection (b) of this section, a substance abuse treatment facility that offers or proposes to offer outpatient treatment shall demonstrate to the satisfaction of the Mayor that it has the staff, space, and financial resources to provide each patient with a sufficient number of treatment sessions on a regular schedule to treat the substance abuse disorder that the patient experiences.

(e) The Mayor, after the provision of notice and an opportunity for a hearing in accordance with § 2-509, shall suspend or revoke the certification of a substance abuse treatment facility upon a determination by the Mayor that the substance abuse treatment facility is not in substantial compliance with the requirements of subsection (b) and subsection (c) or (d) of this section, whichever is applicable. If the Mayor suspends certification of a treatment facility pursuant to this subsection, the period of suspension shall be for a fixed period of time and shall be specified by the Mayor in the suspension order.

(f) The penalty for the operation of a substance abuse treatment facility without the certification required by this section shall be:

(1) A civil fine of not less than \$100 for each day of operation without certification; and

(2) Revocation of the certificate of occupancy issued by the Department of Consumer and Regulatory Affairs for the premises occupied by the substance abuse treatment facility.

(g) Any certification issued pursuant to this section shall be issued as a Public Health: Health Care Facility endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Mar. 15, 1990, D.C. Law 8-80, § 5, 36 DCR 8469; Apr. 20, 1999, D.C. Law 12-261, § 2003(cc), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(ff), 50 DCR 6913.)

Section references. — This section is referred to in §§ 44-1203, 44-1205, and 44-1207.

Prior Codifications. — 1981 Ed., § 32-1604.

Effect of amendments. — D.C. Law 15-38, in subsec. (g), substituted “Public Health: Health Care Facility endorsement to a basic business license under the basic” for “Class A

Public Health: Health Care Facility endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(ff) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 8-80. — For legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second read-

ings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 44-202.

§ 44-1205. Financial assistance program.

(a) There is established within the District government a program to provide financial assistance to any person or organization that applies for financial assistance to conduct a program of substance abuse prevention in accordance with the applicable provisions of Unit A of Chapter 3 of Title 2.

(b) Any person or organization that applies for financial assistance from the District government to conduct a program of substance abuse prevention, education, or counseling, as a condition of receiving assistance, shall demonstrate to the satisfaction of the Mayor that:

(1) The program has been developed in consultation with a qualified health professional;

(2) The content of written, audiovisual, or other information to be provided through the program is accurate, current, and consistent with established medical or scientific findings;

(3) The program will be carried out in accordance with a systematic written plan that shall include goals, timetables, and specific methods to measure the progress and effectiveness of achieving the established goals; and

(4) The program meets any other criteria established by rules issued pursuant to § 44-1207(c).

(c) The requirements of § 44-1204 and subsection (b) of this section shall not apply to:

(1) A hospital licensed by the District government pursuant to Chapter 5 of this title; or

(2) A health professional licensed pursuant to Chapter 12 of Title 3, who provides outpatient substance abuse treatment to private patients within the scope of the practice of the health occupation that he or she is licensed to practice.

(Mar. 15, 1990, D.C. Law 8-80, § 6, 36 DCR 8469.)

Prior Codifications. — 1981 Ed., § 32-1605. legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

Legislative history of Law 8-80. — For

§ 44-1206. Substance abuse prevention campaign.

(a) The Mayor shall establish and implement a public education campaign intended to prevent substance abuse.

(b) The public education campaign shall incorporate, at a minimum, the following:

(1) The dissemination of statistics and other information that illustrate the dangers of drug use and alcohol abuse;

(2) The dissemination of information about the symptoms of substance abuse and dependence;

(3) The dissemination of information about methods to treat substance abuse and the availability and cost of treatment facilities in the District;

(4) The dissemination of literature designed for different age groups and levels of education published by the District government for distribution on a regular basis at public places deemed appropriate by the Mayor;

(5) A series of print, audio, and audiovisual substance abuse education messages to be provided on a continuing basis to all newspapers, magazines, radio and television stations, and other mass communications media in the District for use as public service announcements or advertisements;

(6) Community forums offered by the District government in conjunction with professional organizations, community organizations, or individual volunteers to be conducted on a regular basis at schools, recreation centers, civic and community centers, and other similar facilities; and

(7) A speaker's bureau of qualified personnel available to speak, lead discussions, and present written or audiovisual material at school and community programs.

(c) All print, audio, and audiovisual material distributed in conjunction with the public education campaign shall include the names, addresses, and telephone numbers of appropriate treatment facilities in the District.

(d) The Mayor shall implement the public education campaign in a manner that promotes the coordination of efforts by participating agencies and the District of Columbia Public Schools.

(Mar. 15, 1990, D.C. Law 8-80, § 7, 36 DCR 8469.)

Prior Codifications. — 1981 Ed., § 32-1606. legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

Legislative history of Law 8-80. — For

§ 44-1207. Fees and fines; rules.

(a) The Mayor, by rule, shall establish a graduated, need-based, schedule of fees to charge individuals who receive treatment at the treatment facility established pursuant to § 44-1203. The Mayor, by rule, shall establish a schedule of fees for the certification required by § 44-1204.

(b) The director of the treatment facility may file claims for payment for services provided to an individual who is a beneficiary of a policy or contract of health insurance that provides coverage for drug treatment services.

(c) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue any other rules necessary to implement the provisions of this chapter.

(d) Except as provided in § 44-1204(f), civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or the rules issued under authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infractions shall be pursuant to Chapter 18 of Title 2.

(Mar. 15, 1990, D.C. Law 8-80, § 8, 36 DCR 8469; June 5, 2003, D.C. Law 14-307, § 602, 49 DCR 11664.)

Section references. — This section is referred to in § 44-1205.

Prior Codifications. — 1981 Ed., § 32-1607.

Effect of amendments. — D.C. Law 14-307 inserted “and fines” after “fees” in the section heading; added the last sentence to subsec. (a); and added subsec. (d).

Emergency legislation. — For temporary (90 day) amendment of section, see § 602 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of sec-

tion, see § 602 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 602 of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 8-80. — For legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 44-401.

§ 44-1208. Limitations on benefits.

Nothing in this chapter shall be construed to create an entitlement to substance abuse treatment during any fiscal year if no funds remain available to the District government under a District government or federal appropriation that has been enacted for the specific purpose of providing substance abuse treatment services or unless the person has the ability to pay.

(Mar. 15, 1990, D.C. Law 8-80, § 9, 36 DCR 8469.)

Section references. — This section is referred to in § 44-1202.

Prior Codifications. — 1981 Ed., § 32-1608.

Legislative history of Law 8-80. — For legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

§ 44-1209. Impact on insurance coverage.

Nothing in this chapter shall be construed to relieve any insurer from providing the coverage required by Chapter 31 of Title 31.

(Mar. 15, 1990, D.C. Law 8-80, § 10, 36 DCR 8469.)

Prior Codifications. — 1981 Ed., § 32-1609.

Legislative history of Law 8-80. — For

legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

§ 44-1210. Appropriations.

Sufficient funds to carry out the requirements of this chapter are authorized to be appropriated out of the general revenues of the District of Columbia.

(Mar. 15, 1990, D.C. Law 8-80, § 11, 36 DCR 8469.)

Cross references. — Traffic adjudication, criminal offenses, offenses contained in this chapter, see § 50-2302.02.

Prior Codifications. — 1981 Ed., § 32-1610.

Temporary Addition of Section. — For

temporary (225 day) addition of sections, see §§ 2 to 7 of Safety Net Temporary Act of 2002 (D.C. Law 14-112, April 13, 2002, law notification 49 DCR 4060).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of

Safety Net Emergency Act of 2001 (D.C. Act 14-221, December 21, 2001, 49 DCR 404).

For temporary (90 day) financial assistance to nonprofit corporations that have increased demand for services because of the events of September 11, 2001, see §§ 2 to 7 of Safety Net

Congressional Review Emergency Act of 2002 (D.C. Act 14-301, February 25, 2002, 49 DCR 3389).

Legislative history of Law 8-80. — For legislative history of D.C. Law 8-80, see Historical and Statutory Notes following § 44-1201.

SUBTITLE II. SPECIAL INSTITUTIONS.

CHAPTER 13. INDUSTRIAL HOME SCHOOL.

Sec.

44-1301. Control and management.

44-1302. Powers and duties of Department of Human Services.

44-1303. Exchange; sale and use of School site;

Sec.

acquisition of new site and buildings.

44-1304. Disposition of moneys from Industrial Home School.

§ 44-1301. Control and management.

The Department of Human Services shall have complete and exclusive control and management of the Industrial Home School. All supplies for said School shall be obtained by requisition upon the Mayor of the District of Columbia and all moneys received at said School as income thereof from sale of products and from payments for board and instruction, or otherwise, shall be paid over to said Mayor to be expended by him for the support of the School.

(June 11, 1896, 29 Stat. 410, ch. 419; Feb. 28, 1923, 42 Stat. 1361, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 209, ch. 58, § 6.)

Cross references. — Public welfare supervision, generally, see § 4-105 et seq.

Prior Codifications. — 1981 Ed., § 32-701. 1973 Ed., § 32-501.

Editor's notes. — Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58, as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the

Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1302. Powers and duties of Department of Human Services.

Board of Children's Guardians, successors of trustees of the Industrial Home

School of the District of Columbia, is abolished, and the powers and duties of such Board as specified and restricted by law are transferred to the Department of Human Services.

(Feb. 28, 1923, 42 Stat. 1361, ch. 148, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2.)

Cross references. — Charitable organizations receiving federal appropriations, board members, and adverse or pecuniary interest, see § 44-714.

Prior Codifications. — 1981 Ed., § 32-702. 1973 Ed., § 32-502.

Editor's notes. — Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public

Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 44-1303. Exchange; sale and use of School site; acquisition of new site and buildings.

The Secretary of the Navy is hereby authorized and empowered to convey to the District of Columbia, free from all encumbrances and without costs to the District of Columbia, all right, title, and interest of the United States of America to that portion of the Naval Observatory grounds, with the improvements thereon, lying outside of Naval Observatory Circle and east of Massachusetts Avenue Northwest, Washington, District of Columbia, containing fourteen and four hundred and forty-nine one-thousandths acres, more or less, and also that other portion lying outside of the adjoining said Naval Observatory Circle on the south, containing one and seven hundred and six one-thousandths acres, more or less, in consideration of which the Mayor of the District of Columbia is authorized and empowered to convey to the United States of America, free from all encumbrances and without cost to the United States of America, all right, title, and interest of the District of Columbia to that portion of the Industrial Home School site, with the improvements thereon, lying within said Naval Observatory Circle, containing approximately six and seventy-six one-hundredths acres; provided, that the said Mayor is further authorized and empowered on behalf of the District of Columbia to utilize or sell, as he sees fit, all of that remaining portion of the said Industrial Home School site with the improvements thereon lying outside of the said Observatory (1,000-foot radius) Circle, and also all of the land and improvements thereon east of Massachusetts Avenue and south of said Naval Observatory Circle, hereunder authorized to be acquired from the United States of

America; provided further, that if utilized the land shall be used for school, playground or highway purposes or transferred to the Director of the National Park Service to become part of the park system of the District of Columbia; provided further, that all of the proceeds from the sale of the aforesaid Industrial Home School property and one-half of the proceeds from the sale of any of said lands mentioned as lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the District of Columbia and made available for the purchase of a site and the erection thereon of suitable buildings for a new Industrial Home School; provided further, that the remaining half of the proceeds from the sale of any of said land lying east of Massachusetts Avenue and south of said Naval Observatory Circle shall be deposited in the Treasury of the United States to the credit of the Naval Observatory: And provided further, that the said Mayor of the District of Columbia shall be permitted to continue to use all of the Industrial Home School property herein mentioned until such time as it may have acquired another site and constructed suitable buildings thereon in which to house the inmates of said Industrial Home School. The Secretary of the Navy, on behalf of the United States, and the Mayor, on behalf of the District of Columbia, are hereby authorized to execute and deliver all instruments necessary to accomplish the aforesaid purposes.

(Mar. 3, 1927, 44 Stat. 1386, ch. 354, §§ 1, 2.)

Cross references. — Mayor, council, and other officers, execution of documents by executive secretary, see § 1-301.23.

Prior Codifications. — 1981 Ed., § 32-703. 1973 Ed., § 32-503.

Editor's notes. — Office of Public Buildings and Parks abolished: The Office of Public Buildings and Public Parks of the National Capital was abolished and the functions thereof were transferred to the Office of National Parks, Buildings, and Reservations of the Department of the Interior by Executive Order No. 6166, § 3, June 10, 1933. The name of the latter office was changed to "National Park Service" by the Act of March 2, 1934, 48 Stat. 389, ch. 38, § 1. The functions of the Director of the National Park Service relating to public buildings were transferred to the Federal Works Administrator by § 303(b) of Reorganization Plan No. 1, July 1, 1939, 4 F.R. 2729, 53 Stat. 1427. All functions of the Federal Works Administrator were transferred to the Administrator of General Services by § 103(a) of the Act of June 30, 1949, 63 Stat. 380, ch. 288. The Office of Fed-

eral Works Administrator was abolished by § 103(b) of said Act.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1304. Disposition of moneys from Industrial Home School.

All moneys received at the Industrial Home School as income from sale of products and from payment of board or of instruction or otherwise shall be paid into the Treasury of the United States to the credit of the District of Columbia.

(Feb. 25, 1929, 45 Stat. 1292, ch. 314.)

Cross references. — Traffic adjudication, criminal offenses, offenses contained in this chapter, see § 50-2302.02.

Prior Codifications. — 1981 Ed., § 32-704.
1973 Ed., § 32-504.

CHAPTER 14. FOREST HAVEN.

Sec.

44-1401. Authority to acquire site and erect buildings; title to, and jurisdiction over, land.

44-1402. Control and supervision; name.

Sec.

44-1403. Sale of products; disposition of proceeds.

44-1404. Severability.

§ 44-1401. Authority to acquire site and erect buildings; title to, and jurisdiction over, land.

The Mayor of the District of Columbia is authorized and directed to acquire a site for a home and school for feeble-minded persons, said site to be located in the District of Columbia or in the State of Maryland or in the State of Virginia, and to erect thereon suitable buildings for a home and school feeble-minded persons. The title to said land is to be taken directly to and in the name of the United States. But the land so acquired shall be under the jurisdiction of the Mayor of the District of Columbia as agent of the United States. The persons are to be admissible to said home and school and the proceedings with reference to securing such admission are to be in accordance with law.

(Feb. 28, 1923, 42 Stat. 1360, ch. 148, § 1.)

Cross references. — Substantially retarded persons, commitment and maintenance, Forest Haven defined, see § 21-1101.

Section references. — This section is referred to in § 44-1402.

Prior Codifications. — 1981 Ed., § 32-801. 1973 Ed., § 32-601.

Temporary Addition of Section. — Section 2 of D.C. Law 19-93 added a section to read as follows: "Sec. 2. Notwithstanding any conditions to the contrary or any procedures, requirements, or restrictions set forth in the Department of General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21; 58 DCR 6226), An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 et seq.), or any other law, the Council approves the disposition by the Mayor of a portion of the approximately 827 acres of real property designated as Tax Map 20, Grid 15, Parcel 96 in the Maryland land records and known by the address 8400 River Road, Laurel, Maryland, which was acquired by the United States in 1923 for the exclusive use of the District pursuant to the provisions of An Act Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1924, and for other purposes, approved February 28, 1923 (42 Stat. 1360; D.C. Official Code § 44-1401), and as the

Easement Area pursuant to a quit claim deed of conservation easement for a period of greater than 20 years, inclusive of extension options, to a nonprofit conservation group and otherwise in accordance with the settlement conditions document entered into between the government of the District of Columbia and the United States Environmental Protection Agency, in USA EPA Docket No. RCRA-3-2010-0071."

Section 4(b) of D.C. Law 19-93 provided that the act shall expire after 225 days of its having taken effect.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1402. Control and supervision; name.

The institution for the custody, care, education, training, and treatment of substantially retarded persons, established by § 44-1401, shall be under the control and supervision of the Department of Human Services of the District, and shall be known as Forest Haven.

(Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 1(1).)

Cross references. — Charitable organizations receiving federal appropriations, board members, and adverse or pecuniary interest, see § 44-714.

Prisons and prisoners, fugitives and rewards, see § 24-201.27.

Public welfare supervision, generally, see § 4-105 et seq.

Substantially retarded persons, commitment and maintenance, Forest Haven defined, see § 21-1101.

Prior Codifications. — 1981 Ed., § 32-802. 1973 Ed., § 32-602.

Editor's notes. — Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a

Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. The executive functions of the Board of Commissioners were transferred to the commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 44-1403. Sale of products; disposition of proceeds.

The Superintendent of the said institution may sell such of the farm, greenhouse, and garden products, and the products of the industrial shops as may not be required in the maintenance and conduct of the home and school, and the funds so secured shall be paid into the Treasury of the United States to the credit of the General Fund of the District of Columbia.

(Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 5; June 28, 1944, 58 Stat. 533, ch. 300, § 18.)

Prior Codifications. — 1981 Ed., § 32-803. 1973 Ed., § 32-606.

§ 44-1404. Severability.

The invalidity of any part of this chapter shall not be construed to affect the validity of any other part capable of having practical operation and effect without the invalid part.

(Mar. 3, 1925, 43 Stat. 1141, ch. 460, § 28.)

Prior Codifications. — 1981 Ed., § 32-804. 1973 Ed., § 32-629.

CHAPTER 15. WASHINGTON HUMANE SOCIETY.

Sec.

- 44-1501. Incorporation; name.
 44-1502. Society to have certain officers.
 44-1503. Officers to be chosen from members.
 44-1504. Bylaws.
 44-1505. Police to arrest law violators at request of member; evidence of membership.
 44-1506. Disposition of fines.
 44-1507. Provisions effective throughout District.

Sec.

- 44-1508. Authority to prevent cruelty to children.
 44-1509. Enforcement of laws by Mayor — Protection of children.
 44-1510. Enforcement of laws by Mayor — Cruelty to animals.
 44-1511. Power to alter, amend or repeal provisions.

§ 44-1501. Incorporation; name.

N. P. Chipman, J. P. Newman, B. Peyton Brown, John A. L. Morrell, Mathew G. Emery, Joseph H. Bradley, senior, William R. Woodward, E. Whittlesey, Warren Choate, Andrew B. Duvall, A. S. Solomons, W. G. Metzertott, Alexander R. Shepperd, S. J. Bowen, H. M. Sweeney, Benjamin E. Gittings, William Tucker, Charles H. Lane, W. Burris, William McPheeters, E. F. N. Faehtz, J. L. Gatchel, John R. Elvans, Edgar I. Booraem, L. H. Hopkins, Thomas P. Keene, W. D. Blackford, F. H. Day, J. Sayles Brown, William Lanborn, E. L. Corbin, N. A. West, John R. Arrison, W. A. Farlee, Benjamin F. Fuller, Robert A. Slater, Alonzo Bell, A. T. Kinney, John J. Jett, A. M. Scott, A. C. White, A. E. Newton, A. S. Taylor, William H. Rowe, Robert Reyburn, W. H. Slater, John C. Parker, William J. Wilson, S. S. Baker, A. Jones, S. R. Bond, John F. Cook, D. W. Anderson, George A. Hall, Charles H. Moulton, John Edwin Mason, Allison Nailor, junior, David A. Burr, T. C. Grey, R. H. Marsh, Thomas Perry, George F. Gulick, and Theodore F. Gatchel, all of the District of Columbia, and such other persons as were associated with them in conformity to this chapter, and their successors duly chosen, were constituted and created a body corporate in the District of Columbia, to be known as the Washington Humane Society.

(June 21, 1870, 16 Stat. 158, ch. 135, § 1; Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

Section references. — This section is referred to in §§ 44-1507 and 44-1511.

Prior Codifications. — 1981 Ed., § 32-901. 1973 Ed., § 32-201.

§ 44-1502. Society to have certain officers.

The officers of said corporation shall consist of a president, 5 vice-presidents, 1 secretary, 1 treasurer, an executive committee of 11 members, and such other officers as shall from time to time seem necessary to this Society.

(June 21, 1870, 16 Stat. 158, ch. 135, § 2.)

Section references. — This section is referred to in §§ 44-1507 and 44-1511.

Prior Codifications. — 1981 Ed., § 32-902. 1973 Ed., § 32-202.

§ 44-1503. Officers to be chosen from members.

The foregoing officers shall be chosen from among the members of the Society.

(June 21, 1870, 16 Stat. 158, ch. 135, § 3.)

Section references. — This section is referred to in §§ 44-1507 and 44-1511.

Prior Codifications. — 1981 Ed., § 32-903. 1973 Ed., § 32-203.

§ 44-1504. Bylaws.

The said Society, for fixing the terms of admission of its members, for the government of the same, for the election, changing, and altering the officers above named, and for the general regulation and management of its affairs, shall have power to form a code of bylaws, not inconsistent with the laws of the District of Columbia, or of the United States, which code, when formed and adopted at a regular meeting, shall, until modified or rescinded, be equally binding as this chapter upon the Society, its officers, and members.

(June 21, 1870, 16 Stat. 158, ch. 135, § 4.)

Section references. — This section is referred to in §§ 44-1507 and 44-1511.

Prior Codifications. — 1981 Ed., § 32-904. 1973 Ed., § 32-204.

§ 44-1505. Police to arrest law violators at request of member; evidence of membership.

Members of the Metropolitan Police force of the District of Columbia, upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant, and take him before the Superior Court of the District of Columbia for trial. Proper evidence of membership to a police officer shall be the exhibition of a badge or certificate of membership in the Society.

(June 21, 1870, 16 Stat. 158, ch. 135, § 5; R.S., D.C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 12; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Cross references. — Animal cruelty, warrantless arrest, fighting or baiting, see § 22-1009.

Animal cruelty, warrantless arrest, notice to owner, see § 22-1004.

Section references. — This section is referred to in §§ 44-1507 and 44-1511.

Prior Codifications. — 1981 Ed., § 32-905. 1973 Ed., § 32-205.

§ 44-1506. Disposition of fines.

One half of all the fines collected through the instrumentality of the Society or its agents, for violations of such laws shall accrue to the benefit of said Society.

(June 21, 1870, 16 Stat. 158, ch. 135, § 6; Mar. 3, 1901, 31 Stat. 1198, ch. 854, § 48.)

Cross references. — Animal cruelty, fines and penalties, disposition, see § 22-1006.

Section references. — This section is referred to in §§ 44-1507 and 44-1511.

Prior Codifications. — 1981 Ed., § 32-906. 1973 Ed., § 32-206.

§ 44-1507. Provisions effective throughout District.

The provisions of §§ 44-1501 to 44-1507 shall be general within the boundaries of the District of Columbia.

(June 21, 1870, 16 Stat. 159, ch. 135, § 7.)

Cross references. — Age of majority, establishment, see § 46-101.

Section references. — This section is referred to in § 44-1511.

Prior Codifications. — 1981 Ed., § 32-907. 1973 Ed., § 32-207.

§ 44-1508. Authority to prevent cruelty to children.

The Washington Humane Society is authorized to extend its operations to the protection of children as well as animals from cruelty and abuse. In pursuance thereof the said Society may cause its proper officers or agents to prefer complaints, before any court in the District of Columbia having jurisdiction, for the violation of any law relating to or affecting the protection of children in said District, and by its proper attorney may aid in bringing the facts before such court in any proceeding taken.

(Feb. 13, 1885, 23 Stat. 302, ch. 58, § 1.)

Prior Codifications. — 1981 Ed., § 32-908. 1973 Ed., § 32-208.

§ 44-1509. Enforcement of laws by Mayor — Protection of children.

The Mayor of the District of Columbia shall, by the police force of said District, aid the said Society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the Mayor of the said District, and his successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said Society, or they may commission any duly appointed agents of said Society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the Family Division of the Superior Court, which offenders shall be taken by such agents or officers before the said Family Division of the Superior Court for trial. Said agents or officers are also hereby empowered to bring before the said Court any child who is subjected to cruel treatment, willful abuse, or neglect, or any child under 17 years of age found in a house of ill fame; and said Court may commit such child

to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children.

(Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(h).)

Cross references. — Age of majority, establishment, see § 46-101.

Public welfare supervision, board of public welfare, child care and supervision, see § 4-116.

Prior Codifications. — 1981 Ed., § 32-909. 1973 Ed., § 32-209.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Habeas corpus rights.
Purpose of legislation.
Review.

Habeas corpus rights.

Marriage of incorrigible female child committed to national training school does not entitle her to release on habeas corpus. Code, § 1126, D.C. Code 1929, T. 15, § 58; Act July 9, 1888, 25 Stat. 245, as amended by Act June 26, 1912, 37 Stat. 171, 20 U.S.C. §§ 162, 163; Act May 3, 1876, § 8, 20 U.S.C. § 145 and note; Act Feb. 13, 1885, 23 Stat. 302; Act July 26, 1892, § 5, 27 Stat. 268, 39 U.S.C. § 422; 46 U.S.C. § 145; Act March 19, 1906, § 8, 34 Stat. 73. *Richardson v. Browning*, 18 F.2d 1008, 1927 U.S. App. LEXIS 2125 (1927).

Purpose of legislation.

The objective of legislation dealing with juve-

nile offenders is rehabilitation, not punishment. D.C. Code 1940, §§ 3-106, 3-114, 3-116, 11-902, 11-906, 11-908 to 11-918, 11-915, 32-209, 32-815; Reorganization Plan No. 2, § 3, 5 U.S.C. following section 133t. In *re Kroll*, 43 A.2d 706, 1945 D.C. App. LEXIS 111 (Cr.App. 1945).

Review.

On appeal from order committing infant to National Training School for Boys until 21 years of age, the issue was whether there was sufficient evidence to support a finding that the boy's welfare or the safety and protection of the public required removal from the home of his parents. D.C. Code 1940, §§ 3-106, 3-114, 3-116, 11-902, 11-906, 11-908 to 11-918, 11-915, 32-209, 32-815; Reorganization Plan No. 2, § 3, 5 U.S.C. following section 133t. In *re Kroll*, 43 A.2d 706, 1945 D.C. App. LEXIS 111 (Cr.App. 1945).

§ 44-1510. Enforcement of laws by Mayor — Cruelty to animals.

The Mayor of the District of Columbia is authorized, in his discretion, to detail from time to time 1 or more members of the Metropolitan Police force to aid the Washington Humane Society in the enforcement of laws relating to cruelty to animals as well as of the laws relating to cruelty to children.

(June 25, 1892, 27 Stat. 60, ch. 135, § 2.)

Prior Codifications. — 1981 Ed., § 32-910. 1973 Ed., § 32-210.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1511. Power to alter, amend or repeal provisions.

Congress shall have power to alter, amend, or repeal §§ 44-1501 to 44-1507 at any time.

(June 21, 1870, 16 Stat. 159, ch. 135, § 8.)

Prior Codifications. — 1981 Ed., § 32-911.

1973 Ed., § 32-211.

SUBTITLE III. MANAGEMENT OF INSTITUTIONAL FUNDS.

CHAPTER 16. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS. [REPEALED]

Sec.

44-1601 to 44-1609. [Repealed].

§§ 44-1601 to 44-1609. Definitions; expenditure of net appreciation of assets of endowment funds — appropriations authorized; expenditure of net appreciation of assets of endowment funds — restrictions by gift instruments; rule of construction; Investments authorized for institutional funds; delegation of investment authority; standard of care for administration of certain powers; release of restrictions on funds; severability; construction of chapter [Repealed].

Repealed.

(Apr. 6, 1977, D.C. Law 1-103, §§ 2-10, 23 DCR 8733; Apr. 13, 2005, D.C. Law 15-354, § 68, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 48(e), 53 DCR 6794; Jan. 23, 2008, D.C. Law 17-69, § 11, 54 DCR 11650.)

Prior Codifications. — 1981 Ed., § 32-401 to 409.

1973 Ed., § 32-1201 to 32-1209.

Legislative history of Law 1-103. — Law 1-103 was introduced in Council and assigned Bill No. 1-139, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on September 15, 1976, and October 12, 1976, respectively. Signed by the Mayor on November 9, 1976, it was assigned Act No. 1-172 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

Legislative history of Law 17-69. — Law 17-69, the “Uniform Prudent Management of Institutional Fund Act of 2007”, was introduced

in Council and assigned Bill No. 17-145 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on October 23, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 19, 2007, it was assigned Act No. 17-181 and transmitted to both Houses of Congress for its review. D.C. Law 17-69 became effective on January 23, 2008.

Editor’s notes. — Prudent investor rule: Section 2(b) of D.C. Law 12-187 provided that “the prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust.”

Uniform Law: These sections were based upon §§ 1-9 of the Uniform Management of Institutional Funds Act.

CHAPTER 16A. UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS.

Sec.	Sec.
44-1631. Definitions.	44-1636. Reviewing compliance.
44-1632. Standard of conduct in managing and investing institutional fund.	44-1637. Application to existing institutional funds.
44-1633. Appropriation for expenditure or accumulation of endowment fund; rules of construction.	44-1638. Relation to Electronic Signatures in Global and National Commerce Act.
44-1634. Delegation of management and investment functions.	44-1639. Uniformity of application and construction.
44-1635. Release or modification of restrictions on management, investment, or purpose.	

§ 44-1631. Definitions.

For the purposes of this chapter, the term:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term "endowment fund" does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes;

(B) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term "institutional fund" does not include:

(A) Program-related assets;

(B) A fund held for an institution by a trustee that is not an institution;

or

(C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primar-

ily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Jan. 23, 2008, D.C. Law 17-69, § 2, 54 DCR 11650.)

Legislative history of Law 17-69. — Law 17-69, the "Uniform Prudent Management of Institutional Fund Act of 2007", was introduced in Council and assigned Bill No. 17-145 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on October 23, 2007, and November 6, 2007, respectively. Signed by the

Mayor on November 19, 2007, it was assigned Act No. 17-181 and transmitted to both Houses of Congress for its review. D.C. Law 17-69 became effective on January 23, 2008.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1632. Standard of conduct in managing and investing institutional fund.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool 2 or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules shall apply:

(1) In managing and investing an institutional fund, the following factors, if relevant, shall be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(2) Management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

(3) Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

(4) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(5) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(6) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(Jan. 23, 2008, D.C. Law 17-69, § 3, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631. **Editor's notes.** — Uniform Law: This section is based upon § 3 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1633. Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a)(1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established.

(2) Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution.

(3) In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (A) The duration and preservation of the endowment fund;
- (B) The purposes of the institution and the endowment fund;
- (C) General economic conditions;

- (D) The possible effect of inflation or deflation;
- (E) The expected total return from income and the appreciation of investments;
- (F) Other resources of the institution; and
- (G) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument shall specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only “income”, “interest”, “dividends”, or “rents, issues, or profits”, or “to preserve the principal intact”, or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

(Jan. 23, 2008, D.C. Law 17-69, § 4, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631. **Editor’s notes.** — Uniform Law: This section is based upon § 4 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1634. Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) Selecting an agent;
- (2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of the District of Columbia, an agent submits to the jurisdiction of the courts of the District of Columbia in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the District of Columbia other than this chapter.

(Jan. 23, 2008, D.C. Law 17-69, § 5, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631. **Editor's notes.** — Uniform Law: This section is based upon § 4 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1635. Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b)(1) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if:

- (A) The restriction has become impracticable or wasteful;
- (B) The restriction impairs the management or investment of the fund;

or

(C) Because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund.

(2) The institution shall notify the Attorney General for the District of Columbia of the application, and the Attorney General for the District of Columbia shall be given an opportunity to be heard.

(3) To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

(c)(1) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument.

(2) The institution shall notify the Attorney General for the District of Columbia of the application, and the Attorney General for the District of Columbia shall be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General for the District of Columbia, may release or modify the restriction, in whole or part, if:

- (1) The institutional fund subject to the restriction has a total value of less than \$50,000, subject to adjustment pursuant to subsection (e) of this section;
- (2) More than 20 years have elapsed since the fund was established; and

(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(e) The dollar amount specified in subsection (d)(1) of this section shall be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor ("Index"), using 2007 as the base year, as follows:

(1) The dollar amount shall be adjusted as of January 1st of each year if the cumulative percentage of change in the Index, from the base year or from a later year that was the basis of an adjustment of this amount pursuant to this subsection, rounded to the nearest whole percentage point, is in excess of 10%.

(2) The amount of any adjustment shall be rounded to the nearest \$5,000.

(3) The dollar amount shall not be reduced below \$50,000.

(4) No adjustment to the dollar amount shall occur before January 1, 2009.

(Jan. 23, 2008, D.C. Law 17-69, § 6, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631. **Editor's notes.** — Uniform Law: This section is based upon § 6 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1636. Reviewing compliance.

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken.

(Jan. 23, 2008, D.C. Law 17-69, § 7, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631. **Editor's notes.** — Uniform Law: This section is based upon § 7 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1637. Application to existing institutional funds.

This chapter applies to institutional funds existing on or established after January 23, 2008. As applied to institutional funds existing on January 23, 2008, this chapter governs only decisions made or actions taken on or after that date.

(Jan. 23, 2008, D.C. Law 17-69, § 8, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631. **Editor's notes.** — Uniform Law: This section is based upon § 8 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1638. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(a)

of that act (15 U.S.C. § 7001(a)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Jan. 23, 2008, D.C. Law 17-69, § 9, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Prudent Management of Institutional Funds Act of 2007.

§ 44-1639. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Jan. 23, 2008, D.C. Law 17-69, § 10, 54 DCR 11650.)

Legislative history of Law 17-69. — For Law 17-69, see notes following § 44-1631.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Prudent Management of Institutional Funds Act of 2007.

SUBTITLE IV. CHARITABLE SOLICITATIONS.

CHAPTER 17. CHARITABLE SOLICITATIONS.

Sec.	Sec.
44-1701. Definitions.	44-1708. Compensation for telephone solicitation prohibited.
44-1702. Powers of Mayor and Council.	44-1709. Advisory committee.
44-1703. Certificate of Registration — Required; exception.	44-1710. Regulations.
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§ 44-1701. Definitions.

As used in this chapter:

(1) The term "Mayor" means the Mayor of the District of Columbia, sitting as a board, or any agent or agency designated by him to perform any function vested in the Mayor by this chapter.

(2) The term "registrant" means the holder of a valid certificate of registration duly issued under the terms of this chapter.

(3)(A) "Solicit" and "solicitation" mean the request directly or indirectly for any contribution on the plea or representation that such contribution will or may be used for any charitable purpose, and also mean and include any of the following methods of securing contributions:

(i) Oral or written request;

(ii) The distribution, circulation, mailing, posting, or publishing of any handbill, written advertisement, or publication;

(iii) The making of any announcement to the press, over the radio, by television, by telephone, or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale, or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution; or

(iv) The sale of, offer, or attempt to sell, any advertisement, advertising space, book, card, magazine, merchandise, subscription, ticket of admission, or any other thing, or where the name of any charitable person is used or referred to in any such appeal as an inducement or reason for making any such sale, or, when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose.

(B) A "solicitation" as defined in this paragraph shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any such sale.

(4) "Charitable" means and includes philanthropic, social service, patriotic,

welfare, benevolent, or educational (except religious education), either actual or purported.

(5) "Contribution" means and includes alms, food, clothing, money, subscription, credit, property, financial assistance, or donations under the guise of a loan of money or property.

(6) "Person" means any individual, firm, copartnership, corporation, company, association, or joint stock association, church, religious sect, religious denomination, society, organization, or league, and other similar representative thereof.

(July 10, 1957, 71 Stat. 278, Pub. L. 85-87, § 2.)

Prior Codifications. — 1981 Ed., § 2-701.
1973 Ed., § 2-2101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1702. Powers of Mayor and Council.

(a) The Mayor and the Council of the District of Columbia are authorized and empowered:

- (1) To administer and enforce the provisions of this chapter;
- (2) To investigate the allegations of any application for a certificate of registration;
- (3) To have access to and inspect and make copies of all the financial books, records, and papers of any person making any solicitation or on whose behalf any solicitation is made;
- (4) To investigate at any time the methods of making or conducting any solicitation;
- (5) To issue a certificate of registration to any person filing an application pursuant to this chapter;
- (6) To suspend or revoke any certificate of registration or solicitor information card, on the ground that the holder of such certificate or card has violated any provision of this chapter or any regulation promulgated pursuant thereto. The Mayor shall give to the interested person or persons an opportunity for a hearing after reasonable notice thereof before suspending or revoking any such certificate or card;
- (7) To prescribe by regulation the form of and the information to be contained in the solicitor information cards required by this chapter, and to prescribe the manner of reproduction and authentication of such cards; and
- (8) To publish, in any manner he deems appropriate, the results of any investigation authorized by this chapter. The Mayor shall, in publishing the results of any such investigation, have power to publish information concern-

ing the officers and members of the governing board of any organization coming within the purview of this chapter; provided, that such information shall not include membership and contribution lists of any such organization.

(b) The Mayor is authorized to prescribe and collect fees for the filing of applications, issuance of certificates of registration, and any other service which this chapter authorizes to be performed by the Mayor. The Mayor shall fix such fees in such amounts as will, in his judgment, approximate the cost to the District of Columbia of such services. In fixing such fees the Mayor may, in his discretion, prescribe either uniform fees or varying schedules of fees based on actual or estimated amounts solicited or to be solicited by registrants or applicants for certificates of registration. No fees may be fixed pursuant to this section until after a public hearing has been held thereon pursuant to reasonable notice thereof.

(c) Licenses or certificates of registration issued under this section shall be issued as a General Business endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(July 10, 1957, 71 Stat. 278, Pub. L. 85-87, § 3; Apr. 20, 1999, D.C. Law 12-261, § 2003(b), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(gg), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 2-702. 1973 Ed., § 2-2102.

Effect of amendments. — D.C. Law 15-38, in subsec. (c), substituted “General Business endorsement to a basic business license under the basic” for “Class B General Business endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(gg) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 44-202.

Editor’s notes. — The introductory language of (a) formerly contained the phrase “with respect to paragraph (7) of this subsection” following “the Council of the District of

Columbia.” This phrase first appeared in the 1973 Edition of the District of Columbia Code, but did not appear in prior codifications. No legislative record of the insertion of this phrase having been found, it has been deleted pursuant to the direction of the Office of Codification Counsel.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(74) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-217.14(a)), appropriate changes in terminology were made in this section.

§ 44-1703. Certificate of Registration — Required; exception.

(a) No person shall solicit in the District of Columbia unless he holds a valid certificate of registration authorizing such solicitation.

(b) The provisions of this chapter shall not apply to any person making solicitations, including solicitations for educational purposes, solely for a church or a religious corporation or a corporation or an unincorporated association under the supervision and control of any such church or religious corporation; provided, that such church, religious corporation, corporation, or unincorporated association is an organization which has been granted exemption from taxation under the provisions of § 501 of the Internal Revenue Code of 1986 (26 U.S.C. § 501); provided further, that such exemption from the provisions of this chapter shall be in effect only so long as such church, religious corporation, corporation, or unincorporated association shall be exempt from taxation under the provisions of § 501 of the Internal Revenue Code of 1986.

(c) The provisions of subsection (a) of this section and §§ 44-1704, 44-1705, 44-1706, and 44-1708 shall not apply to any person making solicitations:

(1) Solely for the American National Red Cross; or

(2) Exclusively among the membership of the soliciting agency.

(d) The Council of the District of Columbia may by regulation prescribe the terms and conditions under which solicitations in addition to those enumerated in subsection (b) of this section may be exempted from the provisions of subsection (a) of this section and §§ 44-1705 and 44-1706; provided, that no exemption granted under authority of this subsection shall exceed for any calendar year \$1,500 in money or property.

(July 10, 1957, 71 Stat. 279, Pub. L. 85-87, § 4.)

Prior Codifications. — 1981 Ed., § 2-703.
1973 Ed., § 2-2103.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(75) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1704. Certificate of registration — Application; issuance.

(a) Application for such certificate of registration shall be made upon such form or forms as shall be prescribed by the Council of the District of Columbia, shall be sworn to and shall be filed with the Mayor at least 15 days prior to the time when the certificate of registration applied for shall become effective.

Each such application shall contain such information as the Council shall by regulation require.

(b) If, while any application is pending, or during the term of any certificate of registration granted thereon, there is any change in fact, policy, or method from the information given in the application, the applicant or registrant shall within 10 days after such change report the same in writing to the Mayor.

(c) The Mayor shall issue a certificate of registration within 10 days after the filing of an application therefor; provided, that, whenever in the opinion of the Mayor the application does not disclose sufficient information required by this chapter, or the regulations made pursuant thereto, to be stated in such application, then the applicant shall file in writing, within 48 hours, exclusive of Sundays and legal holidays, after a demand therefor made by the Mayor, such additional information as may be required by said Mayor; provided further, that the Mayor, for good cause shown by the applicant, may extend the time for filing such additional information; provided further, that the Mayor may withhold the issuance of a certificate of registration until such additional information is furnished. Each certificate of registration shall be valid for such period of time as shall be specified therein.

(July 10, 1957, 71 Stat. 280, Pub. L. 85-87, § 5.)

Prior Codifications. — 1981 Ed., § 2-704. 1973 Ed., § 2-2104.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(76) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1705. Solicitor information cards.

(a) No individual shall solicit in the District of Columbia unless he exhibits a solicitor information card or a copy thereof, produced and authenticated as provided in regulations made pursuant to this chapter, and reads it to the person solicited, or presents it to said person for his perusal, allowing him sufficient opportunity to read such card before accepting any contribution so solicited.

(b) No individual shall solicit in the District of Columbia by printed matter or published article, or over the radio, television, telephone, or telegraph, unless such publicity shall contain the data and information required to be set forth on the solicitor information card; provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents or indicates a willingness to contribute, prior to accepting a contribution from said person, such solicitor information card or a copy thereof produced and authenticated as provided in regulations made pursuant to this chapter.

(July 10, 1957, 71 Stat. 280, Pub. L. 85-87, § 6.)

Prior Codifications. — 1981 Ed., § 2-705. 1973 Ed., § 2-2105.

§ 44-1706. Report of contributions secured.

Each registrant shall, within 30 days after the period for which a certificate of registration has been issued, and within 30 days after a demand therefor by the Mayor, file a report with the Mayor, stating the contributions secured as a result of any solicitation authorized by such certificate and in detail all expenses of or connected with such solicitation, and showing exactly for what use and in what manner all such contributions were or are intended to be dispensed or distributed.

(July 10, 1957, 71 Stat. 280, Pub. L. 85-87, § 7.)

Prior Codifications. — 1981 Ed., § 2-706. 1973 Ed., § 2-2106.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1707. Representations as to finding by Mayor in regard to registration certificate or solicitor card prohibited.

No person shall make or cause to be made any representation that the issuance of a certificate of registration or of a solicitor information card is a finding by the Mayor:

- (1) That the statements contained in the registrant's application are true and accurate;
- (2) That the application does not omit a material fact; or
- (3) That the Mayor has in any way passed upon the merits or given approval to such solicitation.

(July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 8.)

Prior Codifications. — 1981 Ed., § 2-707. 1973 Ed., § 2-2107.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

§ 44-1708. Compensation for telephone solicitation prohibited.

No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation, or institution.

(July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 9.)

Prior Codifications. — 1981 Ed., § 2-708. 1973 Ed., § 2-2108.

§ 44-1709. Advisory committee.

The Mayor may appoint an advisory committee to advise the Mayor in respect to any matter related to the enforcement of this chapter, and the members thereof shall serve without compensation. Such committee shall consist of not less than 5 nor more than 9 members, whose terms shall be fixed by the Mayor. The Mayor is authorized to assign an employee of the District of Columbia to serve as secretary for the committee.

(July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 10.)

Prior Codifications. — 1981 Ed., § 2-709. 1973 Ed., § 2-2109.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1710. Regulations.

The Council of the District of Columbia is authorized to promulgate regulations to carry out the purposes of this chapter; provided, that no such regulation shall be put in effect until after a public hearing has been held thereon.

(July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 11.)

Prior Codifications. — 1981 Ed., § 2-710. 1973 Ed., § 2-2110.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(77) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 44-1711. Registered solicitor's use of name of other person; publication of names of contributors.

(a) No person who is required to obtain a certificate of registration under this chapter shall, for the purpose of soliciting contributions, use the name of any other person, except that of an officer, director, or trustee of the organization for which contributions are solicited, without the written consent of such other person.

(b) A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or his name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

(c) Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 12.)

Prior Codifications. — 1981 Ed., § 2-711. 1973 Ed., § 2-2111.

§ 44-1712. Penalties; prosecutions; actions to enjoin.

(a) Any person violating any provision of this chapter, or regulation made pursuant thereto, or filing, or causing to be filed, an application or report pursuant to this chapter, or regulation made pursuant thereto, containing any false or fraudulent statement, shall be punished by a fine of not more than \$500, or by imprisonment of not more than 60 days, or by both such fine and imprisonment.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia or any of his assistants.

(c)(1) The Attorney General for the District of Columbia, or any of his assistants, is hereby empowered to maintain an action or actions in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any person from soliciting in violation of this chapter or in violation of any regulation made pursuant to this chapter.

(2) If the Attorney General, in the course of an investigation to determine whether to bring a court action under this section, has reason to believe that

a person may have information, or may be in possession, custody, or control of documentary material, relevant to the investigation, the Attorney General may issue in writing and cause to be served upon the person, a subpoena or subpoenas requiring the person to give oral testimony under oath, or to produce records, books, papers, contracts, electronically-stored data and other documentary material for inspection and copying.

(3) Information obtained pursuant to this authority to subpoena is not admissible in a later criminal proceeding against the person who provided the information.

(4) The Attorney General may petition the Superior Court of the District of Columbia for an order compelling compliance with a subpoena issued pursuant to this authority to subpoena.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(July 10, 1957, 71 Stat. 281, Pub. L. 85-87, § 13; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(10); Oct. 5, 1985, D.C. Law 6-42, § 438, 32 DCR 4450; Apr. 13, 2005, D.C. Law 15-354, § 69, 52 DCR 2638; Mar 2, 2007, D.C. Law 16-191, § 70, 54 DCR 6794; June 12, 2007, D.C. Law 17-4, § 4, 54 DCR 4085.)

Prior Codifications. — 1981 Ed., § 2-712. 1973 Ed., § 2-2112.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

D.C. Law 16-191, in subsec. (c), validated a previously made technical correction.

D.C. Law 17-4, in subsec. (c), designated the existing text as par. (1) and added pars. (2), (3), and (4).

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed

by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 44-212.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 44-151.02.

Legislative history of Law 17-4. — Law 17-4, the “Nonprofit Organizations Oversight Improvement Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-53 which was referred to Committee on the Public Safety and Judiciary. The Bill was adopted on first and second readings on March 6, 2007, and April 3, 2007, respectively. Signed by the Mayor on April 19, 2007, it was assigned Act No. 17-33 and transmitted to both Houses of Congress for its review. D.C. Law 17-4 became effective on June 12, 2007.

§ 44-1713. Severability.

If any provision of this chapter, or the application thereof to any persons or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(July 10, 1957, 71 Stat. 282, Pub. L. 85-87, § 15.)

Prior Codifications. — 1981 Ed., § 2-713. 1973 Ed., § 2-2113.

§ 44-1714. Appropriations.

Such appropriations as may be necessary to carry out the purposes of this chapter are authorized.

(July 10, 1957, 71 Stat. 282, Pub. L. 85-87, § 16.)

Prior Codifications. — 1981 Ed., § 2-714. 1973 Ed., § 2-2114.

SUBTITLE V. REPEALED PROVISIONS.

CHAPTER 18. CERTIFICATE OF NEED. [REPEALED]

Sec.

44-1801 to 44-1817. [Repealed].

§ 44-1801. Purpose. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 2, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-301.

Legislative history of Law 9-197. — Law 9-197 was introduced in Council and assigned Bill No. 9-43, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-322 and transmitted to both Houses of Congress for its review. D.C. Law 9-197 became effective on March 16, 1993.

Expiration of Law 9-197. — Section 23(b) of D.C. Law 9-197 provided that the act shall expire 10 years from the date of its having taken effect. D.C. Law 9-197 became effective on March 16, 1993.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1802. Definitions. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 3, 27 DCR 3599; Sept. 29, 1982, D.C. Law 4-156, § 2(a)-(d), 29 DCR 3612; Feb. 24, 1984, D.C. Law 5-48, § 12(a), 30 DCR 5778; Mar. 14, 1985, D.C. Law 5-159, § 12, 32 DCR 30; Sept. 5, 1985, D.C. Law 6-26, § 3, 32 DCR 3615; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-302.

Legislative history of Law 9-197. — Law 9-197 was introduced in Council and assigned Bill No. 9-43, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-322 and transmitted to

both Houses of Congress for its review. D.C. Law 9-197 became effective on March 16, 1993.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1803. When required. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 4, 27 DCR 3599; Sept. 29, 1982, D.C. Law 4-156, § 2(e), 29 DCR 3612; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-303.

Legislative history of Law 9-197. — Law 9-197 was introduced in Council and assigned

Bill No. 9-43, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6,

1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-322 and transmitted to both Houses of Congress for its review. D.C. Law 9-197 became effective on March 16, 1993.

Editor's notes. — Severability: Section 21 of

D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1804. Adoption of procedures and criteria governing review. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 5, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-304.

Legislative history of Law 9-197. — Law 9-197 was introduced in Council and assigned Bill No. 9-43, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-322 and transmitted to

both Houses of Congress for its review. D.C. Law 9-197 became effective on March 16, 1993.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1805. Required findings. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 6, 27 DCR 3599; Mar. 16, 1988, D.C. Law 7-90, § 2, 35 DCR 710; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-305.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1806. Issuance of emergency certificate. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 7, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-306.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1807. Duration, modification, sale or transfer of certificate. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 8, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-307.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1808. Reconsideration of decisions. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 9, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-308.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1809. Administrative review. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 10, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-309.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1810. Judicial review. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 11, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-310.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1811. Issuance of certificate as condition precedent. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 12, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-311.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1812. Violations. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 13, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-312.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1813. Immunity from legal liability. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 14, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-313.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1814. Moratorium on applications. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 15, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-314.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1815. Annual report. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 16, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-315.

Editor's notes. — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the

invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1816. Adoption of regulations. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 17, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-316.

Editor's notes. — Severability: Section 21 of

D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

§ 44-1817. Severability. [Repealed].

Repealed.

(Sept. 16, 1980, D.C. Law 3-99, § 18, 27 DCR 3599; Mar. 16, 1993, D.C. Law 9-197, § 22, 39 DCR 9195.)

Prior Codifications. — 1981 Ed., § 32-317. **Editor's notes.** — Severability: Section 21 of D.C. Law 9-197 provided that if any provision of the act is held invalid for any reason, the invalidity shall not effect the other provisions which shall be given effect without the invalid provisions.

CHAPTER 19. D.C. GENERAL HOSPITAL COMMISSION. [REPEALED]

Subchapter I. General Provisions

Sec.

44-1901, 44-1902. [Repealed].

Subchapter II. D.C. General Hospital Commission

44-1911 to 44-1924. [Repealed].

Subchapter III. Hospital Personnel

Sec.

44-1931 to 44-1936. [Repealed].

Subchapter IV. Hospital Finances

44-1941 to 44-1943. [Repealed].

Subchapter V. Miscellaneous Provisions

44-1951 to 44-1957. [Repealed].

*Subchapter I. General Provisions.***§ 44-1901. Legislative findings; purpose of chapter. [Repealed].**

Repealed.

(May 13, 1977, D.C. Law 1-134, title I, § 101, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-201. 1973 Ed., § 32-1301.

Emergency legislation. — For temporary repeal of this chapter, consisting of §§ 32-201 through 32-257 1981 Ed., see § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), § 402 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), § 402 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and see § 402 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary delay of the effective date of § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(c) of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), and § 501(c) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), and § 501(c) of the Health and Hospitals Public Benefit

Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

Legislative history of Law 11-212. — Law 11-212, the “Health and Hospitals Public Benefit Corporation Act of 1996,” was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became law on April 12, 1997.

Effective date. — Section 501(c) of D.C. Law 11-212 provided that § 402 of the act shall become effective upon the first meeting of the Board pursuant to § 44-1102.04(h).

Editor’s notes. — D.C. Law 1-134, title I, § 101, eff. May 13, 1977, added §§ 32-201 and 32-202 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: “The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq.) [1981 Ed.], is repealed.”

Title V, § 501(c) of D.C. Law 11-212, provided: “(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h).”

§ 44-1902. Definitions. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title I, § 102, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-202. 1973 Ed., § 32-1302.

Emergency legislation. — For temporary repeal of this chapter, consisting of §§ 32-201 through 32-257 [1981 Ed.], see § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), § 402 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), § 402 of the Health and Hospitals Public Benefit Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634), and see § 402 of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1997 (D.C. Act 12-39, March 31, 1997, 44 DCR 2044).

For temporary delay of the effective date of § 402 of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996, see § 501(c) of the Health and Hospitals Public Benefit Corporation Emergency Act of 1996 (D.C. Act 11-388, August 28, 1996, 43 DCR 4937), and § 501(c) of the Health and Hospitals Public Benefit Corporation Congressional Review Emergency Act of 1996 (D.C. Act 11-421, October 28, 1996, 43 DCR 6093), and § 501(c) of the Health and Hospitals Public Benefit

Corporation Second Congressional Review Emergency Act of 1996 (D.C. Act 11-487, January 2, 1997, 44 DCR 634).

Legislative history of Law 11-212. — Law 11-212, the “Health and Hospitals Public Benefit Corporation Act of 1996,” was introduced in Council and assigned Bill No. 11-604, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 7, 1996, it was assigned Act No. 11-389 and transmitted to both Houses of Congress for its review. D.C. Law 11-212 became law on April 12, 1997.

Effective date. — Section 501(c) of D.C. Law 11-212 provided that § 402 of the act shall become effective upon the first meeting of the Board pursuant to § 44-1102.04(h).

Editor’s notes. — D.C. Law 1-134, title I, § 101, eff. May 13, 1977, added §§ 32-201 and 32-202 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: “The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed.”

Title V, § 501(c) of D.C. Law 11-212, provided: “(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h).”

Subchapter II. D.C. General Hospital Commission.

§ 44-1911. Establishment. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 201, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Cross references. — Election campaigns, lobbying, and conflict of interest, disclosure of interests, see § 1-1106.02.

Prior Codifications. — 1981 Ed., § 32-211. 1973 Ed., § 32-1311.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor’s notes. — D.C. Law 1-134, title II,

§ 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: “The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed.”

Title V, § 501(c) of D.C. Law 11-212, provided: “(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h).”

§ 44-1912. Transfer of duties, powers, and functions to Executive Director; plan to restore solvency; composition. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 202, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-212. 1973 Ed., § 32-1312.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1913. Qualifications for membership. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 203, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-213. 1973 Ed., § 32-1313.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1914. Terms of office. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 204, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-214. 1973 Ed., § 32-1314.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see His-

torical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1915. Appointments to vacancies. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 205, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-215. 1973 Ed., § 32-1315.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1916. Rules of procedure; meetings; public budget hearings. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 206, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-216. 1973 Ed., § 32-1316.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1917. Selection, duties and terms of officers. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 207, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-217. 1973 Ed., § 32-1317.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1918. Suspension or removal. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 208, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-218. 1973 Ed., § 32-1318.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1919. Compensation. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 209, 24 DCR 406; Mar. 3, 1979, D.C. Law 2-139, § 3205(fff), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-219. 1973 Ed., § 32-1319.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1920. Duties and powers. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 210, 24 DCR 406; June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756; Mar. 15, 1985, D.C. Law 5-166, § 2, 32 DCR 716; July 26, 1986, D.C. Law 6-131, § 2, 33 DCR 3407; Feb. 28, 1987, D.C. Law 6-200, § 2, 34 DCR 521; Mar. 16, 1989, D.C. Law 7-228, § 3(a), 36 DCR 754;

Nov. 25, 1993, D.C. Law 10-65, § 301(b), 40 DCR 7351; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-220. 1973 Ed., § 32-1320.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1921. Staff members. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 211, 24 DCR 406; Mar. 16, 1989, D.C. Law 7-228, § 3(c), 36 DCR 754; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-221. 1973 Ed., § 32-1321.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1922. Furnishing assistance by District agencies; release of information. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 212, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-222. 1973 Ed., § 32-1322.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1923. Liability of Commissioners. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 213, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-223. 1973 Ed., § 32-1323.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1924. Public hearing. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title II, § 214, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-224. 1973 Ed., § 32-1324.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title II, § 201, eff. May 13, 1977, added §§ 32-211 to 32-224 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

Subchapter III. Hospital Personnel.

§ 44-1931. Executive Director; appointment and termination; powers and responsibilities. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title III, § 301, 24 DCR 406; Mar. 16, 1989, D.C. Law 7-228, § 3(d), 36 DCR 754; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-231. 1973 Ed., § 32-1331.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see His-

torical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title III, § 301, eff. May 13, 1977, added §§ 32-231 to 32-236 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1932. Medical Director; appointment; duties. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title III, § 302, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-232. 1973 Ed., § 32-1332.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title III, § 301, eff. May 13, 1977, added §§ 32-231 to 32-236 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1933. Staff. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title III, § 303, 24 DCR 406; Mar. 16, 1989, D.C. Law 7-228, § 3(e), 36 DCR 754; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-233. 1973 Ed., § 32-1333.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title III, § 301, eff. May 13, 1977, added §§ 32-231 to 32-236 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1934. Personnel system. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title III, § 304, 24 DCR 406; Mar. 16, 1989, D.C. Law 7-228, § 3(b), 36 DCR 754; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-234. 1973 Ed., § 32-1334.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title III, § 301, eff. May 13, 1977, added §§ 32-231 to 32-236 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1935. Transfer of positions and funds. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title III, § 305, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-235. 1973 Ed., § 32-1335.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title III, § 301, eff. May 13, 1977, added §§ 32-231 to 32-236 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1936. Discrimination prohibited. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title III, § 306, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-236. 1973 Ed., § 32-1336.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title III, § 301, eff. May 13, 1977, added §§ 32-231 to 32-236 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

Subchapter IV. Hospital Finances.

§ 44-1941. Budgets and appropriations; bills for services. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title IV, § 401, 24 DCR 406; Apr. 9, 1997, D.C.

Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-241. 1973 Ed., § 32-1341.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title IV, § 401, eff. May 13, 1977, added §§ 32-241 to 32-243 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1942. Establishment of D.C. General Hospital Fund; deposit and transfer of monies; billing receipts; capital debt service; federal provisions not affected. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title IV, § 402, 24 DCR 406; Nov. 25, 1993, D.C. Law 10-65, § 301(d), 40 DCR 7351; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-242. 1973 Ed., § 32-1342.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title IV, § 401, eff. May 13, 1977, added §§ 32-241 to 32-243 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

§ 44-1943. Audits. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title IV, § 403, 24 DCR 406; June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 44-1102.04.)

Prior Codifications. — 1981 Ed., § 32-243. 1973 Ed., § 32-1343.

Emergency legislation. — See notes to § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title IV,

§ 401, eff. May 13, 1977, added §§ 32-241 to 32-243 [1981 Ed.].

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective

upon the first meeting of the Board pursuant to section 204(h)."

Subchapter V. Miscellaneous Provisions.

§ 44-1951. Purchasing. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 501, 24 DCR 406; June 30, 1978, D.C. Law 2-89, § 2, 24 DCR 9756; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-251. 1973 Ed., § 32-1351.

Emergency legislation. — See notes following § 44-1901.

For temporary amendment of section, see § 4(a) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary amendment of section, see § 301(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Emergency Act of 1998 (D.C. Act 12-351, May 20, 1998, 45 DCR 3673), and § 301(b) of the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan and Fiscal Year 1998 Revised Budget Support Act of 1997 Technical Amendments Congressional Review Emergency Act of 1998 (D.C. Act 12-432, August 6, 1998, 45 DCR 5920).

For temporary amendment of section, see § 4 of the Establishment of Council Contract Re-

view Criteria and Budget Support Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-500, December 2, 1998, ____ DCR ____).

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

§ 44-1952. Annual reports. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 502, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-252. 1973 Ed., § 32-1352.

Emergency legislation. — See notes following § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

§ 44-1953. Task Force; appointment; study; report and recommendations. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 503, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-253. 1973 Ed., § 32-1353.

Emergency legislation. — See notes following § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

§ 44-1954. Disclosure of reports. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 504, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-254. 1973 Ed., § 32-1354.

Emergency legislation. — See notes following § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: "The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed."

Title V, § 501(c) of D.C. Law 11-212, provided: "(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h)."

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

§ 44-1955. Confidentiality of medical records and information. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 505, 24 DCR 406; July 8, 1988, D.C. Law 7-132, § 2, 35 DCR 4108; Mar. 16, 1989, D.C. Law 7-198, § 2, 36 DCR 1; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-255. 1973 Ed., § 32-1355.

Emergency legislation. — See notes following § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see His-

torical and Statutory Notes following § 44-1901.

Editor's notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR 4962), eff. April 9, 1997, provided: "The D.C.

General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed.”

Title V, § 501(c) of D.C. Law 11-212, provided: “(c) Section 402 shall become effective

upon the first meeting of the Board pursuant to section 204(h).”

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

§ 44-1956. Coordination between facilities. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 506, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-256. 1973 Ed., § 32-1356.

Emergency legislation. — See notes following § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor’s notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: “The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed.”

Title V, § 501(c) of D.C. Law 11-212, provided: “(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h).”

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

§ 44-1957. Severability. [Repealed].

Repealed.

(May 13, 1977, D.C. Law 1-134, title V, § 507, 24 DCR 406; Apr. 9, 1997, D.C. Law 11-212, § 402, 43 DCR 4962, effective upon the first meeting of the Board under § 32-262.4.)

Prior Codifications. — 1981 Ed., § 32-257. 1973 Ed., § 32-1357.

Emergency legislation. — See notes following § 44-1901.

Legislative history of Law 11-212. — For legislative history of D.C. Law 11-212, see Historical and Statutory Notes following § 44-1901.

Editor’s notes. — D.C. Law 1-134, title V, § 502, eff. May 13, 1977, added this section.

D.C. Law 11-212, title IV, § 402 (43 DCR

4962), eff. April 9, 1997, provided: “The D.C. General Hospital Commission Act, effective May 13, 1977 (D.C. Law 1-134; D.C. Code § 32-201 et seq. [1981 Ed.]), is repealed.”

Title V, § 501(c) of D.C. Law 11-212, provided: “(c) Section 402 shall become effective upon the first meeting of the Board pursuant to section 204(h).”

D.C. Law 11-259, title III, § 315(b) (44 DCR 1423), eff. April 15, 1997, also repealed § 32-251 [1981 Ed.].

CHAPTER 20. HEALTH SERVICES PLANNING PROGRAM. [REPEALED]

Sec.

44-2001 to 44-2019. [Repealed].

§ 44-2001. Definitions. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 2, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-321.

Temporary Amendment of Section. — For temporary (225 day) repeal of chapter, see § 803 of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 41 DCR).

Emergency legislation. — For temporary establishment, on an emergency basis due to Congressional review, of a health services planning and certificate of need regulatory program in the District of Columbia, see § 2-22 of the Health Services Planning Program Congressio-

nal Review Emergency Act of 1997 (D.C. Act 12-40, March 31, 1997, 44 DCR 2070).

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act 1995,” was introduced in Council and assigned Bill No 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995 respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

§ 44-2002. Office of Health Systems Development; establishment and functions. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 3, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-322.

Emergency legislation. — See notes following § 44-2001.

Legislative history of Law 11-52. — See note to § 44-2001.

§ 44-2003. Health Advisory Committee; establishment and responsibilities. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 4, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-323.

Emergency legislation. — See notes following § 44-2001.

Legislative history of Law 11-52. — See note to § 44-2001.

§ 44-2004. Health Systems Plan; development, publication, updating, and implementation. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 5, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-324. **Legislative history of Law 11-52.** — See **Emergency legislation.** — See notes following § 44-2001. note to § 44-2001.

§ 44-2005. Reporting, analysis and publication of utilization, financial and other health-related data; regulations, reporting periods, format and forms. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 6, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-325. **Legislative history of Law 11-52.** — See **Emergency legislation.** — See notes following § 44-2001. note to § 44-2001.

§ 44-2006. Certificate of need requirements. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 7, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-326. **Legislative history of Law 11-52.** — See **Emergency legislation.** — See notes following § 44-2001. note to § 44-2001.

§ 44-2007. Activities exempt from certificate of need review. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 8, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-327. **Emergency legislation.** — See notes following § 44-2001.

§ 44-2008. Adoption of procedures and criteria for review by the OHSD governing application and review. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 9, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

§ 44-2009

CHARITABLE AND CURATIVE INSTITUTIONS

Prior Codifications. — 1981 Ed., § 32-328.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001.

note to § 44-2001.

§ 44-2009. Criteria for review and required findings. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 10, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-329.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001.

note to § 44-2001.

§ 44-2010. Duration, modification, sale, or transfer of a certificate of need. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 11, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-330.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001.

note to § 44-2001.

§ 44-2011. Reconsideration of review decisions. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 12, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-331.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001.

note to § 44-2001.

§ 44-2012. Administrative appeal. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 13, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-332.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001.

note to § 44-2001.

§ 44-2013. Judicial review of certificate of need decisions. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 14, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-333.

Emergency legislation. — See notes following § 44-2001.

§ 44-2014. Certificate of need mandatory condition precedent. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 15, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-334.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001. note to § 44-2001.

§ 44-2015. Violations and penalties for noncompliance. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 16, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-335.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001. note to § 44-2001.

§ 44-2016. Immunity from civil liability. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 17, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-336.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001. note to § 44-2001.

§ 44-2017. Moratorium on applications. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 18, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-337.

Legislative history of Law 11-52. — See

Emergency legislation. — See notes following § 44-2001. note to § 44-2001.

§ 44-2018. Annual report. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 19, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-338. **Legislative history of Law 11-52.** — See **Emergency legislation.** — See notes following § 44-2001. note to § 44-2001.

§ 44-2019. Rules. [Repealed].

Repealed.

(Mar. 16, 1993, D.C. Law 9-197, § 20, 39 DCR 9195; Sept. 26, 1995, D.C. Law 11-52, § 808, 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 32-339. **Legislative history of Law 11-52.** — See **Emergency legislation.** — See notes following § 44-2001. note to § 44-2001.

CHAPTER 21. SAINT ELIZABETH'S HOSPITAL. [REPEALED]

Sec.

44-2101 to 44-2114. [Repealed].

§ 44-2101. Expenses of indigent patients — Payment from District revenues [Repealed].

Repealed.

(Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(u).)

Prior Codifications. — 1981 Ed., § 32-601. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-401. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2102. Expenses of indigent patients — Payment by Treasury Department [Repealed].

Repealed.

(Mar. 3, 1879, 20 Stat. 395, ch. 182, § 1; July 1, 1916, 39 Stat. 309, ch. 209, § 1; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(v).)

Prior Codifications. — 1981 Ed., § 32-602. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-402. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2103. Payments to Superintendent to be credited to appropriations for care of patients. [Repealed].

Repealed.

(Aug. 4, 1947, 61 Stat. 751, ch. 478, § 3; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(d)(1).)

Prior Codifications. — 1981 Ed., § 32-603. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-403. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2104. Collections or reimbursements of charges to be credited to District. [Repealed].

Repealed.

(Mar. 4, 1913, 37 Stat. 917, ch. 149; July 1, 1916, 39 Stat. 309, ch. 209, § 1; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(w)).

Prior Codifications. — 1981 Ed., § 32-604. **Effective date.** — Section 11(b) of Pub. L. 1973 Ed., § 32-404.

98-621 makes § 10 of that act effective on October 1, 1987.

§ 44-2105. Admission of indigent insane of District. [Repealed].

Repealed.

(R.S., D.C., § 4844; Mar. 3, 1877, 19 Stat. 347, ch. 105; July 1, 1916, 39 Stat. 309, ch. 209, § 1; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(a), (u).)

Prior Codifications. — 1981 Ed., § 32-605. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-405. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2106. Private patients. [Repealed].

Repealed.

(R.S., D.C., §§ 4853, 4854; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(a).)

Prior Codifications. — 1981 Ed., § 32-606. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-406. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2107. Patients of District and federal government. [Repealed].

Repealed.

(Aug. 4, 1947, 61 Stat. 751, ch. 478, § 2; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(d)(1).)

Prior Codifications. — 1981 Ed., § 32-607. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-406a. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2108. Admission of insane convicts. [Repealed].

Repealed.

(R.S., D.C., § 4852; July 1, 1916, 39 Stat. 309, ch. 209, § 1; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(a).)

Prior Codifications. — 1981 Ed., § 32-608. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-407. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2109. Gifts to Hospital — Authorization to accept. [Repealed].

Repealed.

(Nov. 7, 1941, 55 Stat. 760, ch. 469, § 1; Reorg. Plan No. 1 (1953), 67 Stat. 631, 18 F.R. 2053, § 5; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(j).)

Prior Codifications. — 1981 Ed., § 32-609. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-408. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2110. Custody and investment. [Repealed].

Repealed.

(Nov. 7, 1941, 55 Stat. 760, ch. 469, § 2; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(j).)

Prior Codifications. — 1981 Ed., § 32-610. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-409. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2111. Intangible personal property. [Repealed].

Repealed.

(Nov. 7, 1941, 55 Stat. 760, ch. 469, § 3; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(j).)

Prior Codifications. — 1981 Ed., § 32-611. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-410. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2112. Real property or tangible personal property. [Repealed].

Repealed.

(Nov. 7, 1941, 55 Stat. 761, ch. 469, § 4; Reorg. Plan No. 1 (1953), 67 Stat. 631, 18 F.R. 2053, § 5; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(j).)

Prior Codifications. — 1981 Ed., § 32-612. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-411. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2113. Superintendent authorized to prescribe regulations. [Repealed].

Repealed.

(June 22, 1948, 62 Stat. 574, ch. 597, § 4; Reorg. Plan No. 1 (1953), 67 Stat. 631, 18 F.R. 2053, § 5; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(x).)

Prior Codifications. — 1981 Ed., § 32-613. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-415. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

§ 44-2114. Mayor authorized to prescribe regulations. [Repealed].

Repealed.

§ 44-2114

CHARITABLE AND CURATIVE INSTITUTIONS

(June 22, 1948, 62 Stat. 574, ch. 597, § 5; Nov. 8, 1984, 98 Stat. 3369, Pub. L. 98-621, § 10(x).)

Prior Codifications. — 1981 Ed., § 32-614. 98-621 makes § 10 of that act effective on 1973 Ed., § 32-416. October 1, 1987.

Effective date. — Section 11(b) of Pub. L.

TITLE 45. COMPILATION AND CONSTRUCTION OF CODE.

Chapter

1. General Provisions.
2. General Rule of Severability.
3. Law Revision Commission.
4. Laws Remaining in Force.
5. Nonrevival of Statutes.
6. Rules of Construction.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

45-101. [Repealed].

45-102. District of Columbia Code; preparation and publication; printing.

§ 45-101. Disposition of compilation of laws affecting District of Columbia. [Repealed].

Repealed.

(Aug. 2, 1983, D.C. Law 5-24, § 18, 30 DCR 3341.)

Prior Codifications. — 1981 Ed., § 49-101.

Legislative history of Law 5-24. — Law 5-24, the “Technical and Clarifying Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

§ 45-102. District of Columbia Code; preparation and publication; printing.

(a) After publication by the Law Revision Counsel of the fifth annual cumulative supplement to the 1973 Edition of the District of Columbia Code, new editions of the District of Columbia Code (and annual cumulative supplements thereto) shall be prepared and published under the direction of the Council of the District of Columbia and shall set forth the general and permanent laws relating to or in force in the District of Columbia, whether enacted by the Congress or by the Council of the District of Columbia, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in nature.

(b) After completion of the printing of the fifth annual cumulative supplement to the 1973 Edition of the District of Columbia Code, the Public Printer shall, as the Council of the District of Columbia may request, either:

(1) Furnish to the Council of the District of Columbia, on such terms as the Public Printer (in consultation with the Joint Committee on Printing) deems appropriate, the type used in preparing the 1973 Edition of the District

of Columbia Code and the fifth annual cumulative supplement to such edition; or

(2) Make such arrangements with the Council of the District of Columbia as the Public Printer (in consultation with the Joint Committee on Printing) deems appropriate for the printing by the Government Printing Office of future editions of the District of Columbia Code, and annual cumulative supplements thereto, prepared under the direction of the Council of the District of Columbia.

(Aug. 14, 1976, 90 Stat. 1170, Pub. L. 94-386, § 2.)

Cross references. — Acts of Council becoming law, see § 1-204.04.

Council acts and resolutions, see § 1-602.

District of Columbia Statutes-at-Large, see § 1-603.

Prior Codifications. — 1981 Ed., § 49-102.
1973 Ed., § 49-112.

CHAPTER 2. GENERAL RULE OF SEVERABILITY.

Sec.

45-201. Established; exceptions.

§ 45-201. Established; exceptions.

(a) Except as provided in subsection (b) of this section, if any provision of any act of the Council of the District of Columbia or the application thereof to any person or circumstance is held to be unconstitutional or beyond the statutory authority of the Council of the District of Columbia, or otherwise invalid, the declaration of invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of each act of the Council of the District of Columbia are deemed severable.

(b) The Council of the District of Columbia may provide, within the provisions of a specific act, that the provisions of a specific act are non severable or that certain specified provisions are deemed inoperative if certain other provisions of the act are declared invalid. If the Council of the District of Columbia provides for a special nonseverability clause as provided in this subsection, the long title of the act shall reflect the inclusion of a special nonseverability clause.

(Mar. 14, 1984, D.C. Law 5-56, § 2, 30 DCR 6286.)

Prior Codifications. — 1981 Ed., § 49-601.

Legislative history of Law 5-56. — Law 5-56, the “General Rule of Severability Adoption Act of 1983,” was introduced in Council and assigned Bill No. 5-253, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on October 18, 1983 and November 1, 1983, respectively. Signed by the Mayor on November 21, 1983, it was assigned Act No. 5-82 and transmitted to both Houses of Congress for its review.

CASE NOTES

In general.

Nullification of amendment to liquor provisions of District of Columbia Code, providing for moratorium on sale of off-premises consumption of single units of beer, malt liquor and ale in specified area of District, due to failure to give notice of amendment content before amendment had second reading, did not nullify remainder of amendment. *DeCatur Liquors, Inc. v. District of Columbia*, 384 F.Supp.2d 58, 2005 U.S. Dist. LEXIS 15649 (2005), reversed by, remanded by, vacated by 478 F.3d 360, 375 U.S. App. D.C. 130, 2007 U.S. App. LEXIS 4240 (2007).

Provision of municipal regulation requiring consent of church in order for liquor license to be granted to enterprise located within 400 feet of church with 100 or more members, which provision was unconstitutional under First Amendment, was not severable from remainder of regulation, so as to result in absolute ban on

all liquor licenses within 400 feet of church regardless of church's consent, notwithstanding District of Columbia's general severability provision and presumption of severability; given large number of churches in district and draconian impact of outright ban on economic viability of many businesses, district could not have intended to enact such absolute prohibition, inclusion of exceptions to ban in legislation itself showed that outright ban was not legislative intent, and provision was mutually dependent on another portion of ordinance expressly stating “[e]xcept as otherwise provided in this section.” U.S.C. Const.Amend. 1; D.C. Code 1981, § 49-601(a); D.C.Mun.Reg. title 27, §§ 302.1, 302.5. *Espresso, Inc. v. District of Columbia*, 884 F. Supp. 7, 1995 U.S. Dist. LEXIS 5833 (1995).

Questions of severability are interpreted under state law; District of Columbia law is considered “state law” for such purposes. D.C. Code

1981, § 49-601(a). Espresso, Inc. v. District of Columbia, 884 F. Supp. 7, 1995 U.S. Dist. LEXIS 5833 (1995).

CHAPTER 3. LAW REVISION COMMISSION.

Sec.

45-301. Established; composition; term of office; residency requirement; vacancies; compensation; requests for information; power to enter into contracts.

Sec.

45-302. Duties.

45-303. Annual report.

45-304. Appropriations.

45-305. Effective date.

§ 45-301. Established; composition; term of office; residency requirement; vacancies; compensation; requests for information; power to enter into contracts.

(a) There is established in the District of Columbia a District of Columbia Law Revision Commission (hereafter referred to as the "Commission") which shall consist of no more than 17 members to be appointed as follows:

(1) Three members shall be appointed by the Mayor of the District of Columbia, 1 of whom shall be a member of the faculty of a law school in the District of Columbia and 1 of whom shall be a nonlawyer;

(2) Four members shall be appointed by the Council of the District of Columbia upon the recommendation of the Chairman of the Council of the District of Columbia, 1 of whom shall be a nonlawyer and 1 of whom shall be a member of the faculty of a law school in the District of Columbia;

(3) Three members may be appointed by the Joint Committee on Judicial Administration in the District of Columbia, 1 of whom shall be a nonlawyer;

(4) One member shall be appointed by the Attorney General for the District of Columbia;

(5) Two members may be appointed by the Board of Governors of the District of Columbia Bar;

(6) One member shall be appointed by the Director of the District of Columbia Public Defender Service;

(7) One member may be appointed by the President of the United States;

(8) One member may be appointed by the Chairman of the Committee on Governmental Affairs of the Senate; and

(9) One member may be appointed by the Chairman of the Committee on the District of Columbia of the House of Representatives.

(b) Any person who is currently serving a term under the District of Columbia Law Revision Commission Act which does not expire on or before March 31, 1981, may remain in office until the expiration of that term. If a person remains in office, then that person is included in determining the total number of appointments available to each appointing authority under subsection (a) of this section; provided, that:

(1) The President of the United States may appoint a member to the Commission under subsection (a) of this section only after the expiration of the term or resignation of those persons appointed by the President of the United States under the District of Columbia Law Revision Commission Act;

(2) The Chairman of the Committee on Governmental Affairs of the Senate may appoint a member to the Commission under subsection (a) of this

section only after the expiration of the term or resignation of those persons appointed by the President Pro Tempore of the Senate and the minority leader of the Senate under the District of Columbia Law Revision Commission Act; and

(3) The Chairman of the Committee on the District of Columbia of the House of Representatives may appoint a member to the Commission under subsection (a) of this section only after the expiration of the term or resignation of those persons appointed by the Speaker of the House of Representatives and the minority leader of the House of Representatives under the District of Columbia Law Revision Commission Act.

(c) Except as provided in subsection (d) of this section, no person may be appointed as a member of the Commission after the effective date of this chapter unless he or she is a bona fide resident of the District of Columbia who has maintained an actual place of abode in the District of Columbia for at least 90 days immediately prior to his or her appointment to the Commission.

(d) Notwithstanding the provisions of subsection (c) of this section, the residency requirements of the District of Columbia Law Revision Commission Act shall be applied to any person previously appointed to the Commission under that Act.

(e) Members of the Commission shall serve for 4-year terms and may be reappointed for no more than 2 consecutive terms.

(f) The Chairman of the Commission shall be selected by the members of the Commission from among their number.

(g) Appointments to fill vacancies on the Commission shall be made in the same manner, and on the same basis, as original appointments to the Commission. A member appointed to fill a vacancy shall serve until the expiration of the term of the member whose vacancy he or she was appointed to fill.

(h) Members and the Chairman of the Commission shall be entitled to receive compensation (including travel time) in accordance with the provisions of § 1-611.08, except no member or the Chairman of the Commission shall receive more than \$5,000 for the performance of such duties during any 12-month period.

(i) The Commission may request from any department, agency, or instrumentality of the executive branch of the District of Columbia or federal government, including independent agencies, any information necessary to carry out the provisions of this chapter. Each department, agency, instrumentality, or independent agency of the District of Columbia is authorized and directed, to the extent permitted by law, to furnish the Commission the requested information.

(j) The Commission may enter into contracts for which sufficient appropriations are authorized and provided with federal or state agencies, private firms, institutions and individuals to conduct research or surveys, prepare reports and perform other activities necessary to the discharge of its duties; provided, that the Commission shall contract with vendors based in the District of Columbia who pay an unincorporated or incorporated business franchise tax, unless the Commission Chairperson confirms in writing, in

advance of contracting, to the Mayor and the Chairman of the Council of the District of Columbia that such goods and services are not reasonably and competitively available from a vendor based in the District of Columbia.

(k) The Commission may establish such advisory groups, committees, or subcommittees, consisting of members or nonmembers, as it deems necessary and appropriate to carry out the purposes of this chapter.

(Feb. 26, 1981, D.C. Law 3-119, § 2, 27 DCR 5641; Apr. 13, 2005, D.C. Law 15-354, § 70, 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 48(f), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 49-401.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

D.C. Law 16-191, in subsec. (a)(4), validated a previously made technical correction.

Legislative history of Law 3-119. — Law 3-119, the “District of Columbia Law Revision Commission Act of 1980,” was introduced in Council and assigned Bill No. 3-324, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1980 and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-313 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004,” was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it

was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006,” was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

References in text. — The District of Columbia Law Revision Commission Act, referred to throughout this section, is the Act of August 21, 1974, 88 Stat. 483, Pub. L. 93-379, D.C. Law 3-119, codified as § 1-604.06 and this chapter.

Editor’s notes. — Appropriations: The District of Columbia Appropriations Act, 1992, Pub. L. 102-111, contained no appropriation for the Law Revision Commission and subsequent appropriations acts have not restored any appropriation.

§ 45-302. Duties.

It shall be the duty of the Commission to do the following:

(1) Examine the common law and statutes relating to the District of Columbia, the ordinances, regulations, resolutions, and acts of the Council, and all relevant judicial decisions for the purpose of discovering defects and anachronisms in the law relating to the District of Columbia and recommending needed reforms;

(2) Receive and consider proposed changes in the law recommended by the American Law Institute, the Conference of Commissioners on Uniform State Laws, any bar association, or other learned bodies;

(3) Receive and consider suggestions from judges, public officials, lawyers, and the public generally as to defects and anachronisms in the law relating to the District of Columbia;

(4) Recommend, from time to time, to the Council of the District of Columbia such changes in the law relating to the District of Columbia as it deems necessary to modify or eliminate antiquated or inequitable rules of law,

and to bring the civil, criminal, and administrative law relating to the District of Columbia into harmony with modern conditions;

(5) Upon request of the Council of the District of Columbia or the Chairman of the Council of the District of Columbia, study the legislative and rulemaking methods, practices, and procedures used by the District of Columbia government and make recommendations for improvement and modernization.

(Feb. 26, 1981, D.C. Law 3-119, § 3, 27 DCR 5641.)

Prior Codifications. — 1981 Ed., § 49-402. legislative history of D.C. Law 3-119, see Historical and Statutory Notes following § 45-301.
Legislative history of Law 3-119. — For

§ 45-303. Annual report.

The Commission shall make an annual report of its proceedings to the Council of the District of Columbia and the Mayor by March 31st of each year. The report shall contain the following:

- (1) A list of all topics considered by the Commission during the reported year;
- (2) The final disposition of all the topics;
- (3) The number of hearings held;
- (4) Suggested legislative changes;
- (5) A discussion of any problems which may have arisen after a change in legislation; and
- (6) The agenda of the Commission for the next reporting year.

(Feb. 26, 1981, D.C. Law 3-119, § 4, 27 DCR 5641.)

Prior Codifications. — 1981 Ed., § 49-403. legislative history of D.C. Law 3-119, see Historical and Statutory Notes following § 45-301.
Legislative history of Law 3-119. — For

§ 45-304. Appropriations.

Appropriations are authorized to carry out the purposes of this chapter.

(Feb. 26, 1981, D.C. Law 3-119, § 6, 27 DCR 5641.)

Prior Codifications. — 1981 Ed., § 49-404. legislative history of D.C. Law 3-119, see Historical and Statutory Notes following § 45-301.
Legislative history of Law 3-119. — For

§ 45-305. Effective date.

This chapter shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1); provided, that this chapter shall not take effect prior to March 31, 1981.

(Feb. 26, 1981, D.C. Law 3-119, § 7, 27 DCR 5641.)

Prior Codifications. — 1981 Ed., § 49-405. **Legislative history of Law 3-119.** — For

legislative history of D.C. Law 3-119, see Historical and Statutory Notes following § 45-301.

CHAPTER 4. LAWS REMAINING IN FORCE.

Sec.

45-401. Common law, principles of equity and admiralty, and acts of Congress.

45-402. Ordinances of Washington and of levy court.

Sec.

45-403. Acts relating to governing bodies of religious denominations.

45-404. Savings provision.

§ 45-401. Common law, principles of equity and admiralty, and acts of Congress.

(a) The common law, all British statutes in force in Maryland on February 27, 1801, the principles of equity and admiralty, all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force in the District of Columbia on March 3, 1901, shall remain in force except insofar as the same are inconsistent with, or are replaced by, some provision of the 1901 Code.

(b) The repeal of a criminal statute in the District of Columbia that is declaratory of or in abrogation of a common law crime shall not reinstate the common law crime.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1; Apr. 29, 2004, D.C. Law 15-154, § 3(l), 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 49-301. 1973 Ed., § 49-301.

Effect of amendments. — D.C. Law 15-154 designated the existing text as subsection (a); and added subsec. (b).

Legislative history of Law 15-154. — Law 15-154, the “Elimination of Outdated Crimes Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-79, which was

referred to Committee on the Judiciary. The Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-255 and transmitted to both Houses of Congress for its review. D.C. Law 15-154 became effective on April 29, 2004.

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Arrest.

In District of Columbia, and at common law, officer may not arrest for misdemeanor without warrant unless it is committed in his presence or within his view. D.C. Code 1929, T. 20, § 491. Maghan v. Jerome, 88 F.2d 1001, 1937 U.S. App. LEXIS 3300 (1937).

Code, § 1638, repealing all acts of the General Assembly of Maryland and all acts and parts of acts of the Legislative Assembly of the District of Columbia, repealed Rev.St. §§ 794, 795, providing for the arrest and detention of debtors fraudulently conveying away their property. Costello v. Palmer, 20 App.D.C. 210, 1902 U.S. App. LEXIS 5442 (1902).

A proceeding under Rev.St. §§ 794, 795, providing for the arrest and detention of debtors fraudulently conveying away their property, is a proceeding affecting a "substantial right," within the proviso of Code, § 1638, that "the provisions of this Code relating to procedure or practice, and not affecting the substantial rights of parties, shall apply to pending suits," and therefore the Code does not affect such a proceeding, if pending when the Code went into effect. Costello v. Palmer, 20 App.D.C. 210, 1902 U.S. App. LEXIS 5442 (1902).

Under common-law doctrine of fresh pursuit, officer in lawful pursuit could chase individual, suspected of having committed felony, into another jurisdiction and effectuate arrest therein. In re C.A.P., 633 A.2d 787, 1993 D.C. App. LEXIS 278 (1993).

Authority of decisions in other states.

Novel question of local doctrine not previously addressed by District of Columbia courts, as to whether manufacturers and marketers of Saturday Night Special handguns could be held strictly liable for injuries, would be certified to District of Columbia Court of Appeals, where neighboring state from which District of Columbia was created had recently answered question in affirmative. Delahanty v. Hinckley, 845 F.2d 1069, 1988 U.S. App. LEXIS 5678 (C.A.D.C. 1988).

The United States Court of Appeals for the District of Columbia is not bound to follow decisions of courts of Maryland, particularly if they were handed down subsequent to the organization of the District of Columbia. Act of Feb. 27, 1801, 2 Stat. 103. Blair v. Prudential Ins. Co., 472 F.2d 1356, 1972 U.S. App. LEXIS 6094 (C.A.D.C. 1972).

Decisions of the Court of Appeals of Maryland in 1888 and thereafter are not controlling on this court. Baltimore & O.R. Co. v. Thomas, 37 App.D.C. 255, 1911 U.S. App. LEXIS 5660 (1911).

Under District of Columbia law, if there is no District of Columbia law on point, District of Columbia courts should look to law of Maryland for guidance. Sigmund v. Progressive Northern

Ins. Co., 374 F.Supp.2d 33, 2005 U.S. Dist. LEXIS 11549 (2005).

In absence of controlling precedent, federal courts interpreting law of District of Columbia look to law of Maryland. Athridge v. Aetna Cas. & Sur. Co., 163 F.Supp.2d 38, 2001 U.S. Dist. LEXIS 21490 (2001), affirmed in part and reversed in part by, remanded by 351 F.3d 1166, 359 U.S. App. D.C. 22, 2003 U.S. App. LEXIS 24727 (2003).

Generally, decisions of nearby jurisdictions are most persuasive indication of how particular state will decide common-law issue and, at least with respect to Maryland law, such rule of thumb has been elevated into formal principle by District of Columbia. D.C. Code 1981, § 49-301. Brown v. Green, 767 F. Supp. 273, 1991 U.S. Dist. LEXIS 12669 (1991).

Maryland law is not binding precedent on the District of Columbia Court of Appeals; however, the Court of Appeals may look to Maryland law, because the District of Columbia derives its common law from Maryland as of 1801. West v. United States, 866 A.2d 74, 2005 D.C. App. LEXIS 9 (2005).

In absence of District of Columbia common law on particular issue, Court of Appeals will turn to law of Maryland as most authoritative body of law other than District's own precedent. In re C.A.P., 633 A.2d 787, 1993 D.C. App. LEXIS 278 (1993).

Even though an act follows in many respects that of another state, court cannot adopt language from the other state's statute to remedy any supposed lacunae in the District of Columbia statute. Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

Certiorari.

Generally, common-law writ of certiorari sought between private persons will be granted or denied in court's discretion upon special cause shown, and will be refused where there is a plain and equally adequate remedy by appeal or otherwise. U.S. ex rel. Eure v. Borden, 80 F.2d 527, 1935 U.S. App. LEXIS 3346 (1935).

Common law.**— Adoption and repeal, common law.**

Statute providing that all consistent common-law and British statutes in force in Maryland at time of cession of District shall remain in force does not demand blind allegiance, particularly as to common law. D.C. Code § 49-301. White v. Parnell, 397 F.2d 709, 1968 U.S. App. LEXIS 6799 (C.A.D.C. 1968).

The common law, particularly as derived from common law of Maryland, is the fundamental part of the law in the District of Columbia to which court will look in absence of statutory enactment. D.C. Code 1940, § 49-301. Linkins v. Protestant Episcopal Cathedral Foundation of the District of Columbia, 187

F.2d 357, 1950 U.S. App. LEXIS 2351 (C.A.D.C. 1950).

The provision of the District of Columbia Code of 1901 stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, intends that the system of the common law, unwritten and dynamic not in its then-current pronouncements on specific problems, should remain in force. D.C. Code 1940, § 49-301. *Linkins v. Protestant Episcopal Cathedral Foundation of the District of Columbia*, 187 F.2d 357, 1950 U.S. App. LEXIS 2351 (C.A.D.C. 1950).

The provision of the District of Columbia Code of 1901 stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force established the common law as the law in District of Columbia but did not purport to freeze that law into its 1901 or 1801 mold so that it could not expand to meet the changes of a dynamic society. D.C. Code 1940, § 49-301. *Linkins v. Protestant Episcopal Cathedral Foundation of the District of Columbia*, 187 F.2d 357, 1950 U.S. App. LEXIS 2351 (C.A.D.C. 1950).

The common law offense of negligent escape remains a crime in the District of Columbia by virtue of statute providing that common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, except insofar as they are inconsistent with, or replaced by, subsequent legislation of Congress. D.C. Code 1940, § 49-301. *U.S. v. Davis*, 167 F.2d 228, 1948 U.S. App. LEXIS 2429 (1948).

Under the provision of the District of Columbia Code of 1901 stating that the common law and all British statutes in force in Maryland on February 27, 1801, shall remain in force, and under Maryland's Original Declaration of Rights of 1776 providing that the inhabitants of Maryland were entitled to the common law of England and to the benefit of applicable English statutes existing at the time of their first emigration, the "common law" of the District does not embrace an English case of 1799 or 1805 and an English statute passed in 1800. D.C. Code 1929, T. 1, § 21; Organic Act D.C.1801, §§ 1, 3, 5; Const.Md.1776, Declaration of Rights, § 3; Const.Md.Declaration of Rights, art. 5. *Gertman v. Burdick*, 123 F.2d 924, 1941 U.S. App. LEXIS 2849 (1941).

The common law prevails in the District of Columbia. *Cunningham v. Rodgers*, 267 F. 609, 1920 U.S. App. LEXIS 2212 (1920).

The common law of Maryland is the source of the common law of the District of Columbia, and an especially persuasive authority when the common law of District of Columbia is silent. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

District of Columbia courts are bound by the common law of Maryland in effect in 1801, subject to the inherent power of the District of Columbia Court of Appeals to alter or amend the common law. *Calvetti v. Antcliff*, 346 F.Supp.2d 92, 2004 U.S. Dist. LEXIS 23062 (2004).

Common law of Maryland is the source of the District's common law and an especially persuasive authority when the District's common law is silent. *Saylab v. Don Juan Rest., Inc.*, 332 F.Supp.2d 134, 2004 U.S. Dist. LEXIS 16783 (2004).

The common law and all British statutes in force in Maryland on February 27, 1801, remain in force, in District of Columbia, except insofar as they are inconsistent with or are repealed by subsequent legislation of Congress. D.C. Code 1940, § 49-301. *U.S. v. Davis*, 71 F.Supp. 749, 1947 U.S. Dist. LEXIS 2588 (D.D.C.1947).

The common law, both civil and criminal, except as repealed by express statutory provision or modified by inconsistent legislation, remains the law of the District of Columbia. D.C. Code 1940, § 49-301. *Elmhurst v. Shoreham Hotel*, 58 F.Supp. 484, 1945 U.S. Dist. LEXIS 2665 (D.D.C.1945).

The provision in District of Columbia Code of 1901 that British statutes "in force" in Maryland on February 27, 1801, shall remain in force, was intended by Congress to mean those British statutes to benefit of which Maryland inhabitants were entitled under Maryland Declaration of Rights of 1776 which were still recognized as being in force in Maryland in 1801 as part of laws of Maryland under such Declaration of Rights, and such provision did not intend to incorporate in District of Columbia law, either as amending the common law or otherwise, British statutes enacted between 1776 and 1801. D.C. Code 1901, §§ 1, 1636, 1640; Const.Md.1776, Declaration of Rights, § 3. *Burdick v. Burdick*, 33 F.Supp. 921, 1940 U.S. Dist. LEXIS 2962 (D.D.C.1940).

Under provision of District of Columbia Code of 1901 that "common law" shall remain in force in the District, Congress intended the "common law" of England as it existed in Maryland on February 27, 1801, in so far as it had not become obsolete or unsuited to American conditions. D.C. Code 1901, § 1; Const.Md.1776, Declaration of Rights, § 3. *Burdick v. Burdick*, 33 F.Supp. 921, 1940 U.S. Dist. LEXIS 2962 (D.D.C.1940).

A Maryland Court of Appeals decision expounding the common law of that state is an especially persuasive authority when the District's common law is silent. *Douglas v. Lyles*, 841 A.2d 1, 2004 D.C. App. LEXIS 6 (2004).

Statutory provision providing that common law would remain in force except as replaced by statute does not bar court's exercise of its

inherent power to alter or amend common law. D.C. Code 1981, § 49-301. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Statute, which provides that all common law in force in Maryland remains in force as part of law of District of Columbia unless repealed or modified by statute, was not intended to operate as bar to inherent power of Court of Appeals for District of Columbia to alter or amend common law. D.C. Code § 49-301. *United States v. Tucker*, 407 A.2d 1067, 1979 D.C. App. LEXIS 468 (1979).

— In general.

Common law of District of Columbia encompasses all common law in force in Maryland in 1801, unless expressly repealed or modified. D.C. Code 1981, § 49-301. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

Courts will not construe statute to rescind common law, absent legislative purpose to that effect. *Nelson v. Nelson*, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

— Sources and scope, common law.

An English case which was expressive of the common law of England with reference to validity of disposition of accumulations of testamentary trust, which case was quickly repudiated by a remedial act of Parliament, has no binding effect on the courts of the United States. D.C. Code 1901, §§ 1, 1636, 1640; *Const.Md.1776*, Declaration of Rights, § 3. *Burdick v. Burdick*, 33 F.Supp. 921, 1940 U.S. Dist. LEXIS 2962 (D.D.C.1940).

Contempt.

As Rev.St.U.S. § 725, 18 U.S.C. § 459; 18 U.S.C. § 401, limits the power of the courts of the United States to punish contempt of their authority to fine or imprisonment; and, as the Supreme Court of the District of Columbia is a court of the United States, a sentence of that court that imposes both fine and imprisonment upon a party found guilty of contempt cannot be executed as to both, and if he pays the fine imposed he is entitled to be discharged from custody. *Moss v. U.S.*, 23 App.D.C. 475, 1904 U.S. App. LEXIS 5277 (1904).

Dissolution of marriage.

Remarriage outside District of Columbia in disregard of District statute prohibiting remarriage of party divorced for adultery is not void ab initio, but, at most, voidable; such statute not being extraterritorial in operation (D.C. Code 1929, T. 14, § 63). *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S.Dist.Col. 1934).

Writ of ne exeat had fulfilled its intended purpose of insuring superior court's continued in personam jurisdiction over husband during

pendency of divorce action where, despite husband's absences from district, suit was completed routinely with entry of judgment in wife's favor. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Ordering return of bond posted by husband's brother as against a writ of ne exeat issued to secure husband's appearance in divorce litigation, which was routinely completed in wife's favor, was not abuse of discretion, contrary to contention that writ should have been directed toward the further objective of securing proper satisfaction of wife's equitable claims as embodied in money judgments. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Absent a proper finding of forfeiture for breach of terms of writ of ne exeat issued to secure defendant's appearance in divorce suit, funds supplied by third party for a bond as against such writ cannot be applied toward judgments obtained by plaintiff unless extraordinary circumstances are present. D.C. Code § 49-301; D.C. Code 1940, § 11-315. *Gredone v. Gredone*, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Double jeopardy.

The double jeopardy clause's restriction on multiple punishments for one offense serves principally as restraint on courts and prosecutors who otherwise might seek to punish too severely, and it does not limit the legislature's ability to define criminal offenses; thus, whether particular conduct constitutes one or several offenses, if not clear from the statutory language, is ordinarily determined by reference to the legislative intent in framing the offense. U.S. Const.Amend. 5. *Williams v. United States*, 569 A.2d 97, 1989 D.C. App. LEXIS 221 (1989).

Dower and curtesy.

Woman, granted divorce a mensa et thoro from man to whom she was validly married under laws of state in which they resided after her divorce from former husband in District of Columbia because of her adultery with second husband, was entitled to dower in latter's property within District as his widow. D.C. Code 1929, T. 14, §§ 63, 81. *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S.Dist.Col. 1934).

Pleadings in suit to enforce widow's dower rights and recover unpaid alimony from trustees for estate of her deceased husband, from whom widow obtained divorce a mensa et thoro in Virginia after their marriage in Florida following her divorce from former husband in District of Columbia because of her adultery, held not to warrant assumption that her resi-

dence and marriage in Florida were not in "good faith". (D.C. Code 1929, T. 14, § 63). *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

Equitable powers generally.

Courts grant relief against present wrongs and enforce existing right, though property involved was acquired by some past illegal act. *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

Escape.

Indictment charging police officers assigned as guards at jail with offense of negligent escape, sufficiently defined the crime. D.C. Code 1940, § 49—301. *U.S. v. Davis*, 167 F.2d 228, 1948 U.S. App. LEXIS 2429 (1948).

Execution against the person.

Rev.St. §§ 794, 795, 18 U.S.C. §§ 951, 952, 1737, providing for the issue of the *capias* ad satisfaciendum for the arrest of debtors fraudulently conveying away their property, apply as well to a fraudulent conveyance of real estate as to a fraudulent transfer of personal property. *Costello v. Palmer*, 20 App.D.C. 210, 1902 U.S. App. LEXIS 5442 (1902).

An affidavit on which a *capias* ad satisfaciendum is issued under Rev.St. §§ 794, 795, made on information and belief by the treasurer and agent of the corporation, which is the plaintiff in the suit in which the writ is issued, is sufficient. *Costello v. Palmer*, 20 App.D.C. 210, 1902 U.S. App. LEXIS 5442 (1902).

For purpose of statute providing that writ of execution may be issued within three years after it first might have been issued under applicable provisions of law, term "applicable provisions of law" was not so broad as to include law relating to legality of serving writ upon United States such as 1974 Social Services Amendments Act allowing garnishment of wages of federal employee to satisfy legal obligation for child support; term "applicable provisions of law" related to status or quality of judgment rather than to the subject of possible writ of execution on the judgment. D.C. Code § 15-302. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Federal law and judicial procedure.

Full faith and credit clause of Constitution prohibits District of Columbia courts from refusing to enforce rights which have ripened into judgment of state court. U.S. Const. art. 4, § 1. *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

District of Columbia courts are bound, equally with state courts, to observe command of full faith and credit clause of Constitution, wherever applicable (U.S. Const. art. 4, § 1). *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

Section of the District of Columbia Code providing for an award of costs to the prevailing party was not a "statute of the United States" within Rule of Civil Procedure conferring discretion on a trial judge in allowing costs except when an express provision therefor is made in a statute of the United States, and therefore judges of the federal District Court of the District of Columbia have discretion as to whether to allow costs to the prevailing party. Fed. Rules Civ. Proc. rule 54(d), 18 U.S.C.; D.C. Code 1961, §§ 11-1517, 49-301. *Association of Western Rys. v. Riss & Co.*, 320 F.2d 785, 1963 U.S. App. LEXIS 4741 (C.A.D.C. 1963).

That Congress, under its constitutional authority over District of Columbia, Const. art. 1, § 8, has conferred on District of Columbia courts administrative functions, which outside District it could not confer on courts created solely under (article 3), does not make District of Columbia courts any less created under latter provision. *Pitts v. Peak*, 50 F.2d 485, 1931 U.S. App. LEXIS 4491 (1931).

Act Cong. March 4, 1909, c. 321, 35 Stat. 1088 (see 18 U.S.C. § 1 et seq.), known as the federal Penal Code, embraces general legislation of general operation, while the Code of the District of Columbia embraces local legislation of local operation; and an intent to repeal the latter by the former will not be implied. *Johnson v. U.S.*, 38 App.D.C. 347, 1912 U.S. App. LEXIS 2134 (1912).

The provision of Code, § 61, that the Supreme Court of this District shall possess the same powers and exercise the same jurisdiction as the Circuit and District Courts of the United States and shall be deemed a court of the United States, and the provision of Code, § 1, D.C. Code 1929, T. 1, § 21, that all general acts of Congress not locally inapplicable in the District of Columbia shall remain in force in said District, are nothing more than general legislative declarations in affirmance of pre-existing decisions upon the subject. *Moss v. U.S.*, 23 App.D.C. 475, 1904 U.S. App. LEXIS 5277 (1904).

An act of Congress enacted in 1874 cannot be regarded as obsolete because recourse has not often been had to it since its passage. *Costello v. Palmer*, 20 App.D.C. 210, 1902 U.S. App. LEXIS 5442 (1902).

The statute disallowing costs to plaintiff recovering less than \$500 in action brought in District Court of United States where jurisdictional amount exceeds such sum is applicable to District Court of the United States for the District of Columbia. Fed. Rules Civ. Proc. rules 41(d), 42(a), 54(d), 68, 18 U.S.C.; D.C. 1940, §§ 11-305, 49-301. *Silverman v. Central Amusement Co.*, 49 F.Supp. 364, 1943 U.S. Dist. LEXIS 2883 (D.D.C. 1943).

Where plaintiff recovered only \$300 in action for personal injuries in District Court of the

United States for District of Columbia, no costs could be allowed to plaintiff. Fed.Rules Civ.Proc. rules 41(d), 42(a), 54(d), 68, 18 U.S.C.; D.C.1940, §§ 11-305, 49-301. *Silverman v. Central Amusement Co.*, 49 F.Supp. 364, 1943 U.S. Dist. LEXIS 2883 (D.D.C.1943).

Federal savings statute applied to one-day gap between expiration of first emergency act and effective date of second emergency act by District of Columbia Council so as to preserve defendant's prosecution for offenses under first emergency act; first emergency act did not expressly provide for abatement of prosecutions under it upon its expiration. D.C. Code 1981, § 1-229(a); 1 U.S.C. § 109. *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

The All Writs Act applies to the local District of Columbia courts. 18 U.S.C. § 1651. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Under this section, the general savings provision in 1 U.S.C. § 109 applies in the District of Columbia and prevents the abatement of prosecutions begun, but not completed, prior to the expiration of temporary criminal legislation. *United States v. Barnes*, 118 WLR 1709 (Super. Ct. 1990).

Grand jury and grand jury proceedings.

There being such substantial differences between the law relating to the selection and qualifications of grand jurors, prior to January 1, 1902, when the new Code went into effect, and the provisions of the Code with respect thereof, and no provision having been made by the Code for continuing in force the provisions of the former laws relating to jurors until such times as the new regulations might be put in formal operation, a grand jury summoned prior to January 1, 1902, could not be lawfully impaneled subsequent thereto, and an indictment found by such a grand jury is void and of no effect. *Clark v. U.S.*, 19 App.D.C. 295, 1902 U.S. App. LEXIS 5389 (1902).

The joint resolution of congress, passed in December, 1901, providing that all grand and petit juries drawn under existing laws at the time the Code went into effect should serve out their respective terms, not having been approved until January 8, 1902, did not have the effect of validating an indictment found by a grand jury drawn prior to January 1, but not impaneled until January 8, 1902. *Clark v. U.S.*, 19 App.D.C. 295, 1902 U.S. App. LEXIS 5389 (1902).

The acts of congress regulating the selection and qualifications of grand and petit jurors in the District of Columbia prior to January 1, 1902, when the new Code became effective, having been specially enacted for and given

exclusive operation in the District, were not continued in force by Code, § 1, D.C. Code 1929, T. 1, § 21, providing that certain laws, including "all acts of congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act, shall remain in force, except in so far as the same are inconsistent with, or are replaced by, some provision of the Code"; nor was the old jury law included in, or excepted from, any of the repealing provisions of the Code. *Clark v. U.S.*, 19 App.D.C. 295, 1902 U.S. App. LEXIS 5389 (1902).

District of Columbia courts have no supervisory power over federal grand jury proceedings in Pennsylvania. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Homicide.

Doctrine of "transferred intent" is law in Maryland. D.C. Code §§ 22-105, 49-301; 18 U.S.C. § 2. *United States v. Sampol*, 636 F.2d 621, 1980 U.S. App. LEXIS 14134 (C.A.D.C. 1980).

At common law, unjustified or unexcused homicide rose to the level of murder if it was committed with malice aforethought, and that definition continues in the District of Columbia Code. D.C. Code 1981, § 22-2403. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

At common law, the two categories of unintentional killings which were not excused, and were thus manslaughter, were killings in the course of lawful acts carried out in an unlawful, or criminally negligent, fashion, and killings in the course of unlawful, or criminal, acts. *Comber v. United States*, 584 A.2d 26, 1990 D.C. App. LEXIS 324 (1990).

Even though Congress codified elements of first and second-degree murder in District of Columbia, common-law year and day rule, under which an assailant may be prosecuted for homicide only if victim dies within a year and a day of the injury inflicted, was law in District of Columbia. D.C. Code 1981, §§ 22-2401, 22-2403, 49-301. *United States v. Jackson*, 528 A.2d 1211, 1987 D.C. App. LEXIS 388 (1987).

In prosecution for murder of the victim, who was assaulted during purse-snatching incident and who died six days later at hospital after decision was made to discontinue heroic measures to keep her alive, trial court did not err in failing to instruct jury that they should not find defendant guilty of murder if victim would have survived for a year and a day, since victim died within a year and a day of the assault and there was no evidence upon which a reasonable juror could have concluded that victim would have

lived for a year and a day. D.C. Code §§ 22-2401, 49-301. In re N., 406 A.2d 1275, 1979 D.C. App. LEXIS 452 (1979).

Under rule that no person should be adjudged by any act whatever to kill another who does not die by it within a year and a day thereafter, if victim of crime dies after expiration of a year and a day from date of crime, defendant is not required to show that the death ensued from something other than his act; his misdeed is per se excluded from the possible causes of death. D.C. Code § 49-301. In re N., 406 A.2d 1275, 1979 D.C. App. LEXIS 452 (1979).

Rule that no person should be adjudged by any act whatever to kill another who does not die by it within a year and a day thereafter is inapplicable where the victim dies within a year; under such circumstances, defendant may be entitled to an intervening cause instruction, but time period of a year and a day, and the year and a day rule would be improper subject of instruction. D.C. Code § 49-301. In re N., 406 A.2d 1275, 1979 D.C. App. LEXIS 452 (1979).

Doctrine of transferred intent was contained at critical time of Maryland's cession of district within body of criminal law for District of Columbia and so it was available for Government to use in its theory of prosecution in instant murder case. D.C. Code § 49-301. O'Connor v. United States, 399 A.2d 21, 1979 D.C. App. LEXIS 337 (1979).

Felony-murder liability of an accomplice must be determined in accordance with common-law concepts of vicarious liability. D.C. Code §§ 22-105, 22-2401. Christian v. United States, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

In general.

Congressional statute providing that all consistent common law and British statutes in force in Maryland at time of cession of District shall remain in force, gives to the British laws only that force which they previously had in this tract of territory under the laws of Maryland. D.C. Code 1951, § 49-301. Manoukian v. Tomasian, 237 F.2d 211, 1956 U.S. App. LEXIS 2881 (C.A.D.C. 1956).

Under congressional statute giving force to all common law and British statutes which are not inconsistent with or replaced by subsequent legislation of Congress, statute must be given the same force and effect, and no more, than any other British statute on July 4, 1776. D.C. Code 1951, § 49-301. Manoukian v. Tomasian, 237 F.2d 211, 1956 U.S. App. LEXIS 2881 (C.A.D.C. 1956).

Maryland statutes and Maryland decisions of date later than 1801 do not constitute the "law"

of the District of Columbia but later decisions of the Court of last resort of Maryland may be looked to for assistance, not merely in interpreting the law which was inherited from that state by the District of Columbia, but also in interpreting later statutes of the district which are the same or closely similar to those of Maryland. Watkins v. Rives, 125 F.2d 33, 1941 U.S. App. LEXIS 2393 (1941).

Jurisdiction.

Indictment charging conspiracy to commit offense against United States, by statute triable in "district court," held triable before Supreme Court of District of Columbia sitting as criminal court. Federal Cr.Code §§ 37, 340, 18 U.S.C. §§ 371, 3231; D.C. Code 1929, T. 18, §§ 43, 56, 58, 81, 347 T. 1, § 21; Const. art. 3, § 2, and art. 1, § 8. Pitts v. Peak, 50 F.2d 485, 1931 U.S. App. LEXIS 4491 (1931).

While the keeping of a disorderly house was a misdemeanor at common law, punishable by jail imprisonment, the effect of section 1, Code D.C. (D.C. Code 1929, T. 1, § 21), continuing the common law in force in this District, except in so far as it is inconsistent with the Code, and of section 910, D.C. Code 1929, T. 6, § 7, making all criminal offenses not covered by the Code and federal statutes not locally inapplicable punishable by imprisonment in the penitentiary, is to make that offense infamous in this District, and, as such, not within the jurisdiction of the police court, under sections 43 and 934 (31 Stat. 1196, 1341). Palmer v. Lenovitz, 35 App.D.C. 303, 1910 U.S. App. LEXIS 5898 (1910).

Law governing.

Under District of Columbia law, where laws of two jurisdictions are involved, District of Columbia courts apply the law of the state with the more substantial interest in the matter. Nationwide Mut. Ins. Co. v. Richardson, 270 F.3d 948, 2001 U.S. App. LEXIS 23724 (C.A.D.C. 2001).

Federal district court sitting in diversity jurisdiction correctly determined that District of Columbia law governed interpretation of comprehensive general insurance policy purchased from Ohio insurer; the District of Columbia had the most substantial interest in the matter, since it was both the location where the underlying events occurred and the place of the insured's headquarters. Nationwide Mut. Ins. Co. v. Richardson, 270 F.3d 948, 2001 U.S. App. LEXIS 23724 (C.A.D.C. 2001).

Under District of Columbia law, where laws of two jurisdictions are involved, the forum applies law of state which has more substantial interest in resolution of the issue. Blair v. Prudential Ins. Co., 472 F.2d 1356, 1972 U.S. App. LEXIS 6094 (C.A.D.C. 1972).

Under District of Columbia choice-of-law rules, a court must first determine whether there is a conflict between the laws of the relevant jurisdictions; if a conflict exists, under the governmental interest analysis, court must apply the law of the jurisdiction which has a more substantial interest in the case. *Century Int'l Arms, LTD. v. Fed. State Unitary Enter. State Corp. Rosvoorouzhnie*, 172 F.Supp.2d 79, 2001 U.S. Dist. LEXIS 17251 (2001).

Even if issue was how an existing contract should be interpreted, rather than whether contract existed between Russian exporter and Canadian and American distributors, under District of Columbia choice-of-law rules, court would apply Russian law to the dispute since exporter was an agency or instrumentality of the Russian government, subject matter of the alleged contract was Russian arms, and Russia had an extremely strong interest in ensuring that its state-controlled agencies are not subjected to laws that may contravene its own, so as not to interfere with the Russian government's ability to continue to transact business with North American companies. *Century Int'l Arms, LTD. v. Fed. State Unitary Enter. State Corp. Rosvoorouzhnie*, 172 F.Supp.2d 79, 2001 U.S. Dist. LEXIS 17251 (2001).

Whether to apply the *lex loci* or *lex fori* depends whether the accident occurred in Maryland or the District of Columbia. However, because a case was ultimately governed by common law principles of negligence, the *lex loci* and *lex fori* were substantially identical. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

Mandamus.

Allowance of mandamus is controlled by equitable principles. *U.S. ex rel. Greathouse v. Dern*, 53 S.Ct. 614, 1933 U.S. LEXIS 931 (U.S. Dist. Col. 1933).

Writ of mandamus is extraordinary writ that should be issued only in exceptional circumstances. *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Marriage.

District of Columbia statute, invalidating marriages, declared illegal by preceding sections, in another jurisdiction between persons domiciled in the District, is inapplicable to marriages in violation of District statute prohibiting remarriage of party divorced for adultery (D.C. Code 1929, T. 14, §§ 5, 63). *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

Marriage valid by law of state in which solemnized will be recognized as valid in every other jurisdiction, unless polygamous, incestu-

ous, or otherwise declared void by statute. *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

Mayhem.

Specific intent to maim is not an element of the crime of mayhem. D.C. Code 1981, §§ 22-506, 49-301. *Peoples v. United States*, 640 A.2d 1047, 1994 D.C. App. LEXIS 64 (1994).

Nature and elements of crime generally.

A crime and its punishment can be separated and distinguished by the Legislature. One statute may create an offense and another provide for its punishment. What may not have been an infamous crime at common law may by statute be made such; and in determining whether a crime is infamous, the penalty the law imposes must be looked to. *Palmer v. Lenovitz*, 35 App.D.C. 303, 1910 U.S. App. LEXIS 5898 (1910).

All common-law offenses not covered by statute in force in District Court of District of Columbia are still recognized as crimes in the District and are punishable as such. D.C. Code 1940, § 49-301. *U.S. v. Davis*, 71 F.Supp. 749, 1947 U.S. Dist. LEXIS 2588 (D.D.C. 1947).

Under accessory statute, multiple convictions of accessory based on single course of conduct can be obtained when one act forms, or would form, basis for convicting principal of multiple violations of same statute; statute clearly ties punishment of the accessory to underlying crime committed by principal, and under common-law principles of accessory after the fact, accessory is considered to be accomplice of principal. D.C. Code 1981, §§ 22-106, 49-301. *Heard v. United States*, 686 A.2d 1026, 1996 D.C. App. LEXIS 274 (1996).

Although nonpenal statutes traditionally operate prospectively unless there is evidence of legislative intent to the contrary, opposite presumption applies to repeals of criminal statute; at common law, repealing legislation applied retroactively, abating every prosecution which had not yet resulted in final conviction, unless special provision had been enacted to save prosecutions under repealed statute. *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Navigable waters.

Congress has plenary power to control navigation on Potomac river in district of Columbia, with proprietary powers over lands lying under water. U.S. Const. art. 1, § 8, cl. 17. *U.S. ex rel. Greathouse v. Dern*, 53 S.Ct. 614, 1933 U.S. LEXIS 931 (U.S. Dist. Col. 1933).

Sovereign has power to regulate and control lands flowed by tide. *U.S. ex rel. Greathouse v.*

Hurley, 63 F.2d 137, 1933 U.S. App. LEXIS 3343 (1933).

Statute prohibiting creation of obstruction to navigable capacity of waters of United States except by permit applies to Potomac river within District of Columbia (33 U.S.C. § 403). U.S. ex rel. Greathouse v. Hurley, 63 F.2d 137, 1933 U.S. App. LEXIS 3343 (1933).

Ne exeat.

"Ne exeat" is in the nature of civil bail, the purpose of which is to prevent the frustration of a plaintiff's equitable claims by insuring the continued physical presence of the defendant within the court's jurisdiction. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Writs of ne exeat are to be employed only on most careful consideration of interests of all of the parties to the underlying action. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Scope and duration of restraints placed on defendant, via a writ of ne exeat, must not exceed those which are reasonably necessary to protection of plaintiff's equitable claims. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

If objective of a writ of ne exeat is to secure performance or satisfaction of plaintiff's equitable claims as well as defendant's appearance in court, the hostage funds may be applied to benefit of the aggrieved party in event of forfeiture. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Writs of ne exeat serve merely to aid court in effective exercise of its equitable jurisdiction; as long as issuing court remains satisfied that restrained party is conducting himself in accordance with its directives, funds deposited as a guarantee of such behavior ordinarily would not be subject to being applied to satisfaction of money judgments obtained by plaintiff. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Writ of ne exeat is ancillary to exercise of a court's equitable jurisdiction, and, as a general rule, will issue only for presently payable monetary claims of an equitable nature. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Party seeking issuance of a writ of ne exeat must make a proper showing of a threatened departure of defendant from the jurisdiction and a resulting defeat of court's power to give effective in personam relief due its loss of power over the defendant's person. D.C. Code § 49-

301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Courts of District of Columbia may issue writs of ne exeat in support of their jurisdiction over the various forms of marital actions. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Plaintiff bears burden of establishing necessity of both the initial issuance of a writ of ne exeat and its continued application. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Issuance, terms and implementation of writs of ne exeat lie within trial court's sound discretion. D.C. Code § 49-301; D.C. Code 1940, § 11-315. Gredone v. Gredone, 361 A.2d 176, 1976 D.C. App. LEXIS 335 (1976).

Parent and child.

Parents have common-law duty to support their physically or mentally disabled children, even after children have reached age of majority. Nelson v. Nelson, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

Parents were under common-law duty to provide medical care for their infant son, and were also under statutory duty to provide such medical care. D.C. Code §§ 22-902, 49-301. Faunteroy v. United States, 413 A.2d 1294, 1980 D.C. App. LEXIS 275 (1980).

Perpetuities.

Under the "common law" of the United States and of the District of Columbia, accumulation of income of a testamentary trust is permitted for as long as the period of the rule against perpetuities. Gertman v. Burdick, 123 F.2d 924, 1941 U.S. App. LEXIS 2849 (1941).

The common-law rule against "perpetuities" as it relates to remote vesting of title is distinct from the more ancient rule against suspension of alienation, and, while originally confined to a period of lives in being and a reasonable time thereafter, has become crystallized into limitation of a life or lives in being and 21 years thereafter plus the period of gestation. Burdick v. Burdick, 33 F.Supp. 921, 1940 U.S. Dist. LEXIS 2962 (D.D.C.1940).

Under will creating trust to be effective for 21 years after the death of both of testator's named nieces, the future remainder interests did not violate common-law rule against "perpetuities" where estate vested within lives in being and 21 years afterwards. Burdick v. Burdick, 33 F.Supp. 921, 1940 U.S. Dist. LEXIS 2962 (D.D.C.1940).

The English common law so far as it permits, under testamentary trusts, accumulation of large sums of money not to be alienated for long period of time, is obsolete and repugnant to

American conditions and hence not applicable to District of Columbia. D.C. Code 1901, §§ 1, 1636, 1640; Const.Md.1776, Declaration of Rights, § 3. *Burdick v. Burdick*, 33 F.Supp. 921, 1940 U.S. Dist. LEXIS 2962 (D.D.C.1940).

Principles of equity.

Clean hands doctrine held inapplicable in widow's suit in District of Columbia to enforce dower and alimony rights in property of decedent, from whom she was granted divorce a mensa et thoro in Virginia after their marriage in Florida in disregard of district statute prohibiting remarriage of person divorced for adultery. D.C. Code 1929, T. 14, § 63. *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S.Dist.Col. 1934).

Rape and sexual assault.

Federal statutes of limitation were applicable in prosecution for rape in superior court, as they were not inconsistent with any provision of the District of Columbia Code. D.C. Code § 49-301; 18 U.S.C. §§ 3281, 3282. *United States v. Brown*, 422 A.2d 1281, 1980 D.C. App. LEXIS 387 (1980).

Requirement of corroboration of rape victim's testimony serves no legitimate purpose; victim of rape and other sex-related offenses is not so presumptively lacking in credence that corroboration of her testimony is required to withstand motion for judgment of acquittal. D.C. Code §§ 11-721(e), 22-2801, 49-301; U.S. Const. art. 3, § 3. *Arnold v. United States*, 358 A.2d 335, 1976 D.C. App. LEXIS 534 (1976).

Retrospective and ex post facto laws.

Constitutional proscription of ex post facto laws applies only to retrospective legislation. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Retroactive application of a law that imposes a greater punishment than the law in effect when the crime was committed is forbidden by the ex post facto clauses of the Constitution. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Statute retroactively increasing the penalties imposed upon revocation of parole would fall within the Constitutional prohibition against ex post facto laws. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Since administrative regulations that are validly promulgated pursuant to statutory authority have the force and effect of statutes, a new regulation which enhances punishment beyond what was formerly authorized by a valid penal regulation is within the Constitutional ex post facto prohibition. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

In applying general savings statutes, court is not dealing with optional rules of statutory construction, as they are substantive provi-

sions deemed a part of every statute that amends or repeals another statute imposing penalty, forfeiture, or liability. 1 U.S.C. § 109; D.C. Code 1981, § 49-304(a). *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

When statute restores sentencing discretion over option previously foreclosed, repealer has extinguished mandatory penalty, triggering application of general savings statute, even though sentencing judge could still achieve result of repealed statute through exercise of discretion in particular case. 1 U.S.C. § 109; D.C. Code 1981, § 49-304(a). *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

If new legislation increases punishment for crime or makes previously lawful act to be unlawful, ex post facto clause precludes prosecution under the new statute for offenses committed before its effective date; if repealing legislation enacts more lenient sentencing options, ex post facto clause does not prohibit courts from continuing prosecution on applying a new ameliorative sentencing scheme to pending cases. U.S. Const. Art. 1, § 9, cl. 3. *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Because of ex post facto law concerns, whatever inherent power the Court of Appeals had to amend the common law could not be used to deprive manslaughter defendant retroactively of more lenient rule that would otherwise be in force; however, if no clear common-law rule existed, then the court could discern and apply the "dynamic" common law of the District of Columbia derived from all reasonable, available sources. *Williams v. United States*, 569 A.2d 97, 1989 D.C. App. LEXIS 221 (1989).

Right to trial by jury.

Constitutional provision requiring jury trial must be interpreted in light of common law according to which petty offenses might be proceeded against summarily without jury. U.S. Const. art. 3, § 2, cl. 3. *District of Columbia v. Colts*, 51 S.Ct. 52, 1930 U.S. LEXIS 6 (U.S.Dist.Col. 1930).

Simple assault is not serious crime, such that defendant would have right to jury trial, on basis that assault was jury triable at common law; relevant statute supersedes common law. U.S. Const. Art. 3, § 2, cl. 3; Amend. 6; D.C. Code 1981, §§ 22-504, 49-301. *Day v. United States*, 682 A.2d 1125, 1996 D.C. App. LEXIS 184 (1996), writ of certiorari denied by 520 U.S.

1170, 117 S. Ct. 1435, 137 L. Ed. 2d 542, 1997 U.S. LEXIS 2284, 65 U.S.L.W. 3692 (1997).

Sabbath laws.

Act Assem.Md.1723, c. 16 (Abert's Comp.St. p. 176), was intended to enforce the observance of the Sabbath as a religious obligation, and is not only obsolete in this district, and not legally enforceable under our present constitutional form of government, but so much of it as prohibits labor on that day is impliedly repealed by various acts of Congress applying to this district and prohibiting particular kinds of labor on Sunday. *District of Columbia v. Robinson*, 30 App.D.C. 283, 1908 U.S. App. LEXIS 5531 (1908).

Our nation, and the states composing it, are Christian, in policy, to the extent of embracing and adopting the moral tenets of Christianity as furnishing a sound basis upon which the moral obligations of the citizens to society and the state may be established. While it is within the constitutional power of the Legislature to impose upon the public the civil duty observing one day in seven as a day of rest, it is beyond its power to impose the observance of Sunday as a purely religious duty. *District of Columbia v. Robinson*, 30 App.D.C. 283, 1908 U.S. App. LEXIS 5531 (1908).

Search and seizure.

The search warrant provisions of the Espionage Act apply in the District of Columbia in a case of violation of United States statute applicable only to the district. Espionage Act, 18 U.S.C. §§ 5, 1621, 2231, 2234, 2235, 3105, 3109; Fed. Rules Crim.Proc. rule 41, 18 U.S.C. Nuckols v. U.S., 99 F.2d 353, 1938 U.S. App. LEXIS 2876 (1938).

Where local statutes make no provision for issuance of search warrants, Espionage Act is as applicable in District of Columbia as in other places under federal jurisdiction, and, where local statute does make such a provision, Espionage Act is concurrent and cumulative. Espionage Act, 18 U.S.C. §§ 5, 1621, 2231, 2234, 2235, 3105, 3109; Fed. Rules Crim.Proc. rule 41, 18 U.S.C.; D.C. Code 1929, T. 6, § 153. Nuckols v. U.S., 99 F.2d 353, 1938 U.S. App. LEXIS 2876 (1938).

Surface waters.

Compact between Maryland and Virginia recognizing property rights of respective citizens, as riparian owners, in shores of Potomac river, held not in force in District of Columbia. U.S. ex rel. Greathouse v. Hurley, 63 F.2d 137, 1933 U.S. App. LEXIS 3343 (1933).

Under the common law, which, where not changed by statute, is in force in this District, Code D.C. § 1, D.C. Code 1929, T. 1, § 21, although not under the civil law, where unusual conditions do not exist, an upper estate has no natural easement in the lower estate to

discharge over the latter all surface water flowing or accumulating on the upper; and the lower owner is not bound to maintain natural conditions to the extent of taking care of the surface water coming from the land above him. *Baltimore & O.R. Co. v. Thomas*, 37 App.D.C. 255, 1911 U.S. App. LEXIS 5660 (1911).

Wills and probate.

Statutes providing that legacies to persons who are witnesses to a will and testify to establish same are void, are not, unlike most portions of District of Columbia Code, acts of Congress passed for the government of the District, but are part of the law of the District because they are British statutes which were recognized as being in force in Maryland prior to cession of the District in 1801 and maintained in effect by act of Congress retaining all common law in force in Maryland. D.C. Code 1951, §§ 19-104, 19-105, 49-301. *Manoukian v. Tomasian*, 237 F.2d 211, 1956 U.S. App. LEXIS 2881 (C.A.D.C. 1956).

The decisions of Maryland courts on testamentary law of Maryland have bearing on construction of testamentary law of District of Columbia, since District of Columbia's testamentary law was largely taken from Maryland. D.C. Code 1929, T. 29, §§ 192, 193, 203-209, 211, 213-216, 220. *Clawans v. Sheetz*, 92 F.2d 517, 1937 U.S. App. LEXIS 4629 (1937).

Under District of Columbia Code, a widow who renounced a will made by her husband, where there were no intervening heirs, was entitled to whole of her husband's personal estate. D.C. Code 1940, §§ 18-211, 18-702, 49-301. *Wegenast v. Pheylen*, 98 F.Supp. 371, 1951 U.S. Dist. LEXIS 2234 (D.D.C.1951).

The law of wills and probate as existing in Maryland on February 27, 1801, is the law of the District of Columbia except as altered by Congress. In re Lee's Estate, 80 F.Supp. 293, 1948 U.S. Dist. LEXIS 2079 (D.D.C.1948).

Common-law rule of exoneration of mortgage debt on property devised required that, where testatrix devised house to niece "absolutely and in fee simple," the residue had to be drawn on to extinguish the entire amount due and owing under deed of trust, including accrued interest as well as principal on the trust loan. *Johnson v. Martin*, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

Worker compensation laws.

Under general savings statute, repeal of District of Columbia Workers' Compensation Act of 1928 did not result in forfeiture of remedies available at time of repeal for injuries incurred prior to repeal; workmen's compensation claimants seeking damages for prerepeal injuries are entitled to rights and benefits afforded by the 1928 Act as they then existed, but not as they might be modified by subsequent amendment

to the Longshoremen's and Harbor Workers' Compensation Act, which the 1928 Act made applicable to the District of Columbia. D.C. Code 1928, § 36-501 et seq.; Longshore and Harbor Workers' Compensation Act, § 1 et seq., 33 U.S.C. § 901 et seq.; 1 U.S.C. § 109. *Keener v. Wahington Metropolitan Area Transit Authority*, 800 F.2d 1173, 1986 U.S. App. LEXIS 29827 (C.A.D.C. 1986), writ of certiorari denied by 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690, 1987 U.S. LEXIS 1123, 55 U.S.L.W. 3607 (1987).

Repeal of District of Columbia Workers' Compensation Act of 1928 had the effect of severing the application of the Longshoremen's and Harbor Workers' Compensation Act to the District of Columbia in 1982, and thus subsequent 1984 amendments to the Longshoremen's Act, which were designed to reverse United States Supreme Court's holding that general contractor was entitled to immunity against tort suits

under section of the Longshoremen's Act, were without effect on the law of the District. D.C. Code 1928, § 36-501 et seq.; Longshore and Harbor Workers' Compensation Act, §§ 1 et seq., 5, 33 U.S.C. §§ 901 et seq., 905. *Keener v. Wahington Metropolitan Area Transit Authority*, 800 F.2d 1173, 1986 U.S. App. LEXIS 29827 (C.A.D.C. 1986), writ of certiorari denied by 480 U.S. 918, 107 S. Ct. 1375, 94 L. Ed. 2d 690, 1987 U.S. LEXIS 1123, 55 U.S.L.W. 3607 (1987).

Prior District of Columbia workers' compensation law did not continue to exist after effective date of new law except for limited purpose of setting forth standards which govern cases filed prior to that date. 1 U.S.C. § 109; D.C. Code 1981, §§ 36-501 et seq., 49-301. In re *Metro Subway Acci. Referral*, 630 F. Supp. 385, 1984 U.S. Dist. LEXIS 21133 (1984), affirmed by 800 F.2d 1173, 255 U.S. App. D.C. 148, 1986 U.S. App. LEXIS 29827 (1986).

§ 45-402. Ordinances of Washington and of levy court.

All laws and ordinances of the City of Washington, and of the levy court of the District of Columbia, except as modified or repealed by Congress or the Legislative Assembly of the District since June 1, 1871, or until so modified or repealed, remain in full force.

(R.S., D.C., § 91; Comp. Stat. D.C., § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79.)

Prior Codifications. — 1981 Ed., § 49-302. 1973 Ed., § 49-302.

§ 45-403. Acts relating to governing bodies of religious denominations.

All acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination shall remain in force except insofar as the same are inconsistent with or are replaced by the provisions of this Code.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1636; June 30, 1902, 32 Stat. 546, ch. 1329.)

Cross references. — Nonprofit corporations, formation under other acts, see § 29-301.03.

Prior Codifications. — 1981 Ed., § 49-303. 1973 Ed., § 49-303.

CASE NOTES

Religious societies.

Church that was organized under the Religious Societies statute was not bound to follow the District of Columbia Nonprofit Corporation Act (DCNCA) whenever its organizing statute differed from the DCNCA; statute providing

that acts relating to the organization of a religious denomination would not remain in effect insofar as they were inconsistent with or repealed by the District of Columbia Code did not have any effect on the Religious Societies statute, which did not predate the Code. D.C. Code

1981, §§ 29-503(c), 29-901 et seq., 49-303.
 Kelsey v. Ray, 723 A.2d 1215, 1999 D.C. App.
 LEXIS 23 (1999).

§ 45-404. Savings provision.

(a) The repeal of any act of the Council shall not release or extinguish any penalty, forfeiture, or liability incurred pursuant to the act, and the act shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, unless the repealing act expressly provides for the release or extinguishment of any penalty, forfeiture, or liability.

(b) The expiration of any act of the Council shall not release or extinguish any penalty, forfeiture, or liability incurred pursuant to the act, and the act shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of any penalty, forfeiture, or liability, unless the expiring act expressly provides for the release or extinguishment of any penalty, forfeiture, or liability.

(Sept. 26, 1990, D.C. Law 8-165, § 2, 37 DCR 4827.)

Prior Codifications. — 1981 Ed., § 49-304.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of District of Columbia Statutory Savings Provision Temporary Act of 1990 (D.C. Law 8-102, April 6, 1990, law notification 37 DCR 2477).

Legislative history of Law 8-165. — Law 8-165, the "District of Columbia Statutory Savings Provision Act of 1990," was introduced in Council and assigned Bill No. 8-552, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-230 and transmitted to both Houses of Congress for its review.

Editor's notes. — Repeal and Savings Provisions of 1901 Code: Sections 1636 to 1643 of the Act of March 3, 1901, 31 Stat. 1434, ch. 854, provided that:

Repeal and Savings Provisions of 1901 Code: "Sec. 1636. All acts and parts of acts of the general assembly of the State of Maryland general and permanent in their nature, all like acts and parts of acts of the legislative assembly of the District of Columbia, and all like acts and parts of acts of Congress applying solely to the District of Columbia in force in said District on the day of the passage of this act are hereby repealed, except:

"First. Acts and parts of acts relating to the rights, powers, duties, or obligations of the United States.

"Second. Acts and parts of acts relating to the Court of Claims.

"Third. Acts and parts of acts relating to the organization of the District government, or to

its obligations, or the powers or duties of the Commissioners of the District of Columbia, or their subordinates or employees, or to police regulations, and generally all acts and parts of acts relating to municipal affairs only, including those regulating the charges of public-service corporations.

"Fourth. Acts and parts of acts relating to the militia.

"Fifth. All penal statutes authorizing punishment by fine only or by imprisonment not exceeding one year, or both.

"Sixth. Acts and parts of acts of Congress relating solely to the Departments of the General Government in the District of Columbia, or any of them.

"Seventh. Acts or parts of acts authorizing, defining, and prescribing the organization, powers, duties, fees, and emoluments of the register of wills of the District of Columbia and his office.

"Eighth. An act to regulate the practice of pharmacy in the District of Columbia, approved June fifteenth, eighteen hundred and seventy-eight; an act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto, approved June sixth, eighteen hundred and ninety-two; an act regulating the construction of buildings along alleyways in the District of Columbia, approved July twenty-second, eighteen hundred and ninety-two; an act for the promotion of anatomical science, and to prevent the desecration of graves in the District of Columbia, approved February twenty-sixth, eighteen hundred and ninety-five; an act to provide for the incorporation and regula-

tion of medical and dental colleges in the District of Columbia, approved May fourth, eighteen hundred and ninety-six; an act relating to the testimony of physicians in the courts of the District of Columbia, received by the President May thirteenth, eighteen hundred and ninety-six; an act to regulate the practice of medicine and surgery, to license physicians and surgeons, and to punish persons violating the provisions thereof in the District of Columbia, approved June third, eighteen hundred and ninety-six; and, generally, all acts or parts of acts relating to medicine, dentistry, pharmacy, the commitment of the insane to the Government Hospital for the Insane in the District of Columbia, the abatement of nuisances, and public health.

"Ninth. Acts and parts of acts relating to the organization and powers of vestries, trustees, or other governing bodies of any religious denomination.

"All acts and parts of acts included in the foregoing exceptions, or any of them, shall remain in force except in so far as the same are inconsistent with or are replaced by the provisions of this code."

"Sec. 1637. The incorporation into this code of any general and permanent provision taken from an act making appropriations, or from an act containing other provisions of a private or temporary character, shall not repeal nor in any way affect any appropriation or any provision of a private or temporary character contained in any of said acts, but the same shall remain in force."

"Sec. 1638. The repeal by the preceding section of any statute, in whole or in part, shall not affect any act done or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue and may be enforced in the same manner as if such repeal had not been made: Provided, that the provisions of this code relating to procedure or practice and not affecting the substantial rights of parties shall apply to pending suits or proceedings civil or criminal."

"Sec. 1639. The enactment of this code is not to affect or repeal any act of Congress which may be passed between the date of this act and the date when this act is to go into effect; and all acts of Congress that may be passed hereafter are to have full effect as if passed after the enactment of this code, and, so far as such acts may vary from or conflict with any provision contained in this code, they are to have effect as subsequent statutes and as repealing any portion of this act inconsistent therewith."

"Sec. 1640. Nothing in the repealing clause of this code contained shall be held to affect the operation or enforcement in the District of Columbia of the common law or of any British statute in force in Maryland on the twenty-seventh day of February, eighteen hundred and one, or of the principles of equity or admiralty, or of any general statute of the United States not locally inapplicable in the District of Columbia or by its terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, or of any municipal ordinance or regulation, except in so far as the same may be inconsistent with, or is replaced by, some provision of this code."

"Sec. 1641. All offenses committed and all penalties or forfeitures incurred in the District prior to the date on which this code is to take effect may be prosecuted and punished in the same manner and with the same effect as if this code had not been enacted."

"Sec. 1642. Where any action or proceeding by the provisions of chapter forty-one of this code would be barred at the time it goes into effect, or within one year thereafter, which would not be so barred by prior laws, such action or proceeding may be brought or instituted within such period of one year, anything in said chapter to the contrary notwithstanding."

"Sec. 1643. That nothing herein contained shall be held to affect the term of office of any judicial or other officer holding office when this code goes into effect and operation, except when, as in the case of the present justices of the peace and constables, a contrary intention is manifested."

CASE NOTES

ANALYSIS

Abatement of actions.
Construction and application.
Police provisions.
Punishment of criminal offenses.

Abatement of actions.

At common law, pending criminal prosecutions would abate upon repeal of the underlying statute unless there was savings clause in the new legislation, whether legislation was out-

right repeal or merely amendment or reenactment of substantive crime, as any revision effectively repealed the statute underlying the prosecution. *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Federal savings clause shifts common-law presumption that abatement was purpose of legislature in absence of contrary intent by

providing that penalties incurred under temporary statute will not abate upon statute's expiration unless statute expressly so provides. 1 U.S.C. § 109. *United States v. Alston*, 580 A.2d 587, 1990 D.C. App. LEXIS 218 (1990).

Construction and application.

Savings statutes do not undo a repeal but merely provide that rights and liabilities existing at time of repeal will continue to exist. 1 U.S.C. §§ 108, 109; D.C. Code 1981, §§ 29-397, 49-301. In re *Metro Subway Acci. Referral*, 630 F. Supp. 385, 1984 U.S. Dist. LEXIS 21133 (1984), affirmed by 800 F.2d 1173, 255 U.S. App. D.C. 148, 1986 U.S. App. LEXIS 29827 (1986).

In applying general savings statutes, court is not dealing with optional rules of statutory construction, as they are substantive provisions deemed a part of every statute that amends or repeals another statute imposing penalty, forfeiture, or liability. 1 U.S.C. § 109; D.C. Code 1981, § 49-304(a). *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

Police provisions.

The act of the late legislative assembly of the District of Columbia of August 23, 1871, for the prevention of cruelty to animals, being a police regulation, is not repealed by Code D.C. § 1636 (31 Stat. 1434, c. 854), which expressly saves from repeal all acts of that body relating to police regulation. *Johnson v. District of Columbia*, 30 App.D.C. 520, 1908 U.S. App. LEXIS 5565 (1908).

Punishment of criminal offenses.

Under both federal and District of Columbia

savings statutes, mandatory minimum sentences for drug offenses under District of Columbia law were not repealed, as to persons already convicted but not sentenced under the law, by repeal of mandatory minimum sentences. 1 U.S.C. § 109; D.C. Code 1981, § 49-304(a); § 33-541(c) (repealed). *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

When statute restores sentencing discretion over option previously foreclosed, repealer has extinguished mandatory penalty, triggering application of general savings statute, even though sentencing judge could still achieve result of repealed statute through exercise of discretion in particular case. 1 U.S.C. § 109; D.C. Code 1981, § 49-304(a). *Holiday v. United States*, 683 A.2d 61, 1996 D.C. App. LEXIS 174 (1996), writ of certiorari denied by 520 U.S. 1162, 117 S. Ct. 1349, 137 L. Ed. 2d 506, 1997 U.S. LEXIS 2213, 65 U.S.L.W. 3665 (1997).

This savings statute did not require the mandatory minimums of § 33-541 to remain in effect for criminal defendants prosecuted before May 25, 1995, even if they were sentenced after the effective date of the repeal of mandatory-minimum sentences. *United States v. Palmer*, 124 WLR 277 (Super. Ct. 1995).

General savings provision of this section would not apply to forestall application of § 33-541, repealing mandatory minimum sentencing for possession of a controlled substance. *United States v. Palmer*, 124 WLR 277 (Super. Ct. 1995).

CHAPTER 5. NONREVIVAL OF STATUTES.

Sec.

45-501. Intention of Council not to revive pre-

vious repeal unless intention specifically included.

§ 45-501. Intention of Council not to revive previous repeal unless intention specifically included.

As a rule of statutory interpretation, in enacting a statute which includes among its provisions the repeal of a previously enacted repeal (including the repeal of a proviso or an exception), it is not the intention of the Council of the District of Columbia to revive the statute or part thereof which was previously repealed unless such intention to revive the previously repealed statute is specifically included in the language of the statute repealing the previous repealer.

(July 2, 1982, D.C. Law 4-125, § 41, 29 DCR 2093.)

Prior Codifications. — 1981 Ed., § 49-501.

Legislative history of Law 4-125. — Law 4-125, the “Presidential Inauguration Special Regulations and Rule of Interpretation Concerning Nonrevival of Statutes Act of 1982,” was introduced in Council and assigned Bill No. 4-406, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on April 6, 1982 and April 27, 1982, respectively. Signed by the Mayor on May 11, 1982, it was assigned Act No. 4-190 and transmitted to both Houses of Congress for its review.

CHAPTER 6. RULES OF CONSTRUCTION.

Sec.

45-601. Rules stated.

45-602. Words importing singular number to include plural.

45-603. Gender rule of construction.

45-604. "Person" to include partnerships and corporations.

Sec.

45-605. "Executor" to include "administrator".

45-606. Oath to include affirmation.

45-607. "Insane person" and "lunatic".

§ 45-601. Rules stated.

In the interpretation and construction of this Code the following rules shall be observed.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Prior Codifications. — 1981 Ed., § 49-201.
1973 Ed., § 49-201.

References in text. — The term "Code" as

used in this section means "An Act To establish a code of law for the District of Columbia, 31 Stat. 1189 through 31 Stat. 1436."

CASE NOTES

ANALYSIS

Administrative agency construction.

Ambiguity.

Construction with reference to other statute.

Derogation of common law.

Expression of one.

Implied repeals.

In general.

Language of statute.

Last antecedent.

Legislative history.

Legislative intent.

Liberal construction.

Ordinary, common, or plain meaning.

Policy and purpose.

Power and duty of court.

Presumptions.

Questions of law.

Review.

Statute as a whole.

Strict construction.

Administrative agency construction.

The Court of Appeals defers to an administrative agency's interpretation of the statute that it administers if that interpretation is a reasonable one in light of the language of the statute and its legislative history. *Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review*, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

As general rule, Court of Appeals owes deference to agency's interpretation of statute under which it acts; however, Court will not defer to agency's interpretation if it is inconsistent with plain language of statute itself. *D.C. Metro.*

Police Dep't v. Pinkard, 801 A.2d 86, 2002 D.C. App. LEXIS 319 (2002).

The Court of Appeals gives deference to an agency's interpretation of its governing statute so long as that interpretation is reasonable and consistent with the statutory language. *Union Light & Power Co. v. D.C. Dep't of Empl. Servs.*, 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

In reviewing the construction of a statute by the agency charged with its interpretation and enforcement, the agency's interpretation is controlling unless it is plainly erroneous or inconsistent with the statute. *Carillon House Tenants' Ass'n v. D.C. Rental Hous. Comm'n*, 793 A.2d 461, 2002 D.C. App. LEXIS 47 (2002), amended by 2002 D.C. App. LEXIS 99 (D.C. May 1, 2002).

When mayor's agent's decision regarding application to make improvements in historic district is based on interpretation of statute and regulations the mayor's agent administers, that interpretation will be sustained unless shown to be unreasonable or in contravention of language of legislative history of the Historic District Protection Act. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

The court gives deference to the expertise of an agency, as well as its interpretation of its governing statute, unless that interpretation is unreasonable or inconsistent with the language of the statute. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Supreme Court accords considerable deference to an agency's construction of the statute it administers. *Pro-Football, Inc. v. District of*

Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

Ambiguity.

Ambiguity created by "District of Columbia" and "the District of Columbia government" throughout the statutes with no indication whether they were interchangeable or whether they had different meanings in different contexts required examination of other sources, including the legislative history, to interpret statute making time limitations inapplicable to actions brought by the District of Columbia government. D.C. Water & Sewer Auth. v. Delon Hampton & Assocs., 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

When construing a statute, courts must first examine the statute itself to determine whether the language is ambiguous. Carter v. State Farm Mut. Auto. Ins. Co., 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

Construction with reference to other statute.

A more specific statute governs the more general one, and a later supersedes the earlier. District of Columbia v. Gould, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

If related statutes conflict, courts must reconcile them. Abadie v. D.C. Contract Appeals Bd., 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

If divers statutes relate to the same thing, they ought to be taken into consideration in construing any one of them. Abadie v. D.C. Contract Appeals Bd., 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

When a legislature adopts a statute that is modeled after one in effect in another jurisdiction, the legislature is deemed to have adopted as well the judicial constructions of the statute in the jurisdiction in which it originated. Feaster v. Vance, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Where two statutes conflict, a court's task is to reconcile them if possible. George Washington Univ. v. D.C. Bd. of Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

If the conflict between statutes is irreconcilable, the more specific statute governs the more general one, and the later supersedes the earlier. George Washington Univ. v. D.C. Bd. of Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Courts must give effect to both statutes that proscribe identical conduct, unless the legislature has expressed a contrary intent. Anand v. District of Columbia, 801 A.2d 951, 2002 D.C. App. LEXIS 316 (2002).

Under the elements-based rule of statutory construction to determine whether offenses merge, legislative intent as to whether offenses merge is inferred from analyzing the elements

of the two offenses. Malloy v. United States, 797 A.2d 687, 2002 D.C. App. LEXIS 91 (2002).

Language "notwithstanding any other provision of law" customarily evidences an intention of the legislature that the enactment control in spite of any earlier law to the contrary addressing the subject. Leonard v. District of Columbia, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

The court construes statutory provisions not in isolation, but together with other related provisions. Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

While statutory words are to be accorded their ordinary meaning absent indication of a contrary legislative intent, statutory meaning is of course to be derived, not from the reading of a single sentence or section, but from consideration of an entire enactment against the backdrop of its policies and objectives. Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Courts interpret the language of a statute in the context of related provisions. Wells v. Golden, 785 A.2d 641, 2001 D.C. App. LEXIS 232 (2001).

Where two or more statutes relate to the same subject area, courts construe them together. George v. Dade, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

If statutes conflict, a court's task is to reconcile them if possible. George v. Dade, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

When construing a statute, courts must look first to the language of the statute and, if it is clear and unambiguous, give effect to its plain meaning. George v. Dade, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

In reconciling two conflicting statutes, the court's goal is to give effect to the language and intent of both. George v. Dade, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

Where one statute is not irreconcilable with another statute but both statutes can have coincident operation, the court should interpret them so that they are both effective. George v. Dade, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

Derogation of common law.

Under District of Columbia law, statutory provisions that deviate from established common law are to be strictly construed. Paraskevaides v. Four Seasons Wash., 148 F.Supp.2d 20, 2001 U.S. Dist. LEXIS 8876 (2001), reversed by, remanded by 292 F.3d 886, 352 U.S. App. D.C. 182, 2002 U.S. App. LEXIS 11675 (2002).

Expression of one.

One of the most firmly established canons of interpretation is *expressio unius est exclusio*

alterius, that is, the expression of one is the exclusion of the other. *District of Columbia Fin. Responsibility & Mgmt. Auth. v. Concerned Senior Citizens of the Roosevelt Tenant Assoc.*, 129 F.Supp.2d 13, 2000 U.S. Dist. LEXIS 18865 (2000).

The *expressio unius est exclusio alterius* maxim that the expression of one thing is the exclusion of another must be applied with a considerable measure of caution. *E. Sav. Bank, FSB v. Pappas*, 829 A.2d 953, 2003 D.C. App. LEXIS 533 (2003).

Expressio unius est exclusio alterius asserts that the express inclusion of one or more things in a statute implies the exclusion of other things from similar treatment. *In re Uwazih*, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

Implied repeals.

Implied repeals are not favored. *Leonard v. District of Columbia*, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

A later enacted statute will not be held to have implicitly repealed an earlier one unless there is a clear repugnancy between the two. *Leonard v. District of Columbia*, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

In general.

Canon of statutory interpretation should not be invoked if it would cause absurd results or be contrary to the clear intent of Congress. *District of Columbia Fin. Responsibility & Mgmt. Auth. v. Concerned Senior Citizens of the Roosevelt Tenant Assoc.*, 129 F.Supp.2d 13, 2000 U.S. Dist. LEXIS 18865 (2000).

The rule of lenity is a secondary canon of construction, and is to be invoked only where the statutory language, structure, purpose and history leave the intent of the legislature in genuine doubt. *Cullen v. United States*, 886 A.2d 870, 2005 D.C. App. LEXIS 625 (2005).

Criminal statutes should be strictly construed, and ambiguities should be resolved in favor of the defendant. *Cullen v. United States*, 886 A.2d 870, 2005 D.C. App. LEXIS 625 (2005).

With respect to questions of law, the Court of Appeals will uphold the agency's interpretation of the statute it is responsible for administering unless it is unreasonable in light of prevailing law, or conflicts with the statute's plain meaning or legislative history; however, if the agency's decision is based upon a material misconception of the law, the court will reject it. *Parreco v. D.C. Rental Hous. Comm'n*, 885 A.2d 327, 2005 D.C. App. LEXIS 540 (2005).

Like the rule for statutory construction, words of a rule should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Washington v. United States*, 884 A.2d 1080, 2005 D.C. App.

LEXIS 259 (2005), writ of certiorari denied by 547 U.S. 1013, 126 S. Ct. 1490, 164 L. Ed. 2d 265, 2006 U.S. LEXIS 2180, 74 U.S.L.W. 3504 (2006).

Words of a statute should be interpreted according to the ordinary sense and meaning usually given to them, and should also be read in the light of the statute taken as a whole. *District of Columbia v. D.C. Office of Empl. Appeals*, 883 A.2d 124, 2005 D.C. App. LEXIS 486 (2005).

Primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *District of Columbia v. D.C. Office of Empl. Appeals*, 883 A.2d 124, 2005 D.C. App. LEXIS 486 (2005).

When interpreting the language of a statute, court must look to the plain meaning if the words are clear and unambiguous. *District of Columbia v. D.C. Office of Empl. Appeals*, 883 A.2d 124, 2005 D.C. App. LEXIS 486 (2005).

Matter of statutory interpretation is reviewed de novo. *District of Columbia v. D.C. Office of Empl. Appeals*, 883 A.2d 124, 2005 D.C. App. LEXIS 486 (2005).

The words of a statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Richardson v. Easterling*, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

At best the reenactment of statutes is a nebulous foundation for statutory construction, and before a mere reenactment can be given conclusive effect as a legislative adoption of an administrative interpretation, it must be shown that the legislature was conscious that it was doing so. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Where the law is plain, subsequent reenactment by itself does not constitute an adoption of a previous administrative construction that is erroneous. *Sawyer Prop. Mgmt. of Md., Inc. v. D.C. Rental Hous. Comm'n*, 877 A.2d 96, 2005 D.C. App. LEXIS 324 (2005).

Normal rule is that verbs used in statute, such as "must" or "shall," denote mandatory requirements unless such construction is inconsistent with the manifest intent of the legislature or repugnant to the context of the statute. *Leonard v. District of Columbia*, 801 A.2d 82, 2002 D.C. App. LEXIS 318 (2002).

Language of statute.

In resolving question of statutory interpretation, court's starting point is always language of statute. *Armstrong v. D.C. Pub. Library*, 154 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 12585 (2001).

The text of an enactment is the primary source for determining its drafters' intent. *District of Columbia v. Beretta, U.S.A., Corp.*, 872

A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

The literal words of a statute are not the sole index to legislative intent, but are to be read in the light of the statute taken as a whole and are to be given a sensible construction and one that would not work an obvious injustice. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

The Court of Appeals first step when interpreting a statute is to look at the language of the statute. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

The literal words of a statute are not the sole index to legislative intent, but are to be read in the light of the statute taken as a whole, and are to be given a sensible construction and one that would not work an obvious injustice. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

With limited exceptions, unambiguous statutory language trumps all other considerations. *Cass v. District of Columbia*, 829 A.2d 480, 2003 D.C. App. LEXIS 487 (2003), amended by 2003 D.C. App. LEXIS 616 (D.C. Oct. 6, 2003).

The best evidence of the purpose of the legislature is always the text of the statute itself. *Cass v. District of Columbia*, 829 A.2d 480, 2003 D.C. App. LEXIS 487 (2003), amended by 2003 D.C. App. LEXIS 616 (D.C. Oct. 6, 2003).

The language of the statute must control its application. *School St. Assocs. v. District of Columbia*, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

The literal words of a statute are to be read in the light of the purpose of the statute taken as a whole, and are to be given a sensible construction and one that would not work an obvious injustice. *School St. Assocs. v. District of Columbia*, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

Last antecedent.

The "Rule of Last Antecedent" provides that, ordinarily, qualifying phrases are to be applied to the words or phrase immediately preceding and are not to be construed as extending to others more remote; it is not inflexible and is not applied if the context of the language in question suggests a different meaning. *Perkins v. D.C. Bd. of Zoning Adjustment*, 813 A.2d 206, 2002 D.C. App. LEXIS 732 (2002).

Legislative history.

In appropriate cases, courts consult the legislative history of a statute. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

Even when a court is not faced with textual uncertainty in a statute, it may examine extrin-

sic evidence, such as legislative history, as an aid in discerning its meaning or as a means of providing context to its primary analysis of the language of the statute. *Moorer v. United States*, 868 A.2d 137, 2005 D.C. App. LEXIS 31 (2005).

The Court of Appeals may discern the purposes and intent of legislation from the judiciary committee's report. *In re W.M.*, 851 A.2d 431, 2004 D.C. App. LEXIS 294 (2004), writ of certiorari denied by 543 U.S. 1062, 125 S. Ct. 885, 160 L. Ed. 2d 792, 2005 U.S. LEXIS 27, 73 U.S.L.W. 3398 (2005).

In appropriate cases, courts consult the legislative history of a statute. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

When faced with textual uncertainty, a court may turn to extrinsic evidence, such as legislative history, as an aid in discerning its meaning. *Cass v. District of Columbia*, 829 A.2d 480, 2003 D.C. App. LEXIS 487 (2003), amended by 2003 D.C. App. LEXIS 616 (D.C. Oct. 6, 2003).

Where meaning of statute cannot be gleaned from the plain language of the statute, court looks to legislative history to discern the meaning of the statute. *Leonard v. District of Columbia*, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

There is no rule of law forbidding resort to explanatory legislative history in interpreting a statute no matter how clear the words may appear on superficial examination. *Burgess v. United States*, 681 A.2d 1090, 1996 D.C. App. LEXIS 307 (1996).

Legislative intent.

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

The primary rule of statutory construction is that the intent of the legislature is to be found in the language which it has used. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *In re M.O.R.*, 851 A.2d 503, 2004 D.C. App. LEXIS 319 (2004).

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used; therefore, in determining the meaning of a statute, the court must examine first its lan-

guage to determine if it is plain and admits of no more than one meaning. *Sullivan v. District of Columbia*, 829 A.2d 221, 2003 D.C. App. LEXIS 477 (2003).

The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *Carter v. State Farm Mut. Auto. Ins. Co.*, 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

It is unnecessary to look to the legislative intent of a statute where the plain meaning is clear. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Tax laws ought to be given a reasonable construction in order to carry out the intention of the legislature. *Kelly v. District of Columbia*, 765 A.2d 976, 2001 D.C. App. LEXIS 17 (2001).

Liberal construction.

The liberal construction of a statute is not reconstruction. *District of Columbia v. Gould*, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

Ordinary, common, or plain meaning.

A cornerstone of statutory interpretation is the rule that a court will not look beyond the plain meaning of a statute when the language is unambiguous and does not produce an absurd result. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

Where the language in a statute is plain and admits of no more than one meaning, the duty of interpretation does not arise. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

Courts examine the plain meaning of the statute and interpret the words according to their ordinary meaning. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

Courts look to the plain meaning of a statute first, construing words according to their ordinary meaning. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

In interpreting a statute, the court first looks to the plain meaning of its language, and if it is clear and unambiguous and will not produce an absurd result, the court will look no further. *Moorer v. United States*, 868 A.2d 137, 2005 D.C. App. LEXIS 31 (2005).

The words of a statute should be construed according to their ordinary sense and with the meaning commonly attributed to them; the same is true for rules. *Thompson v. District of Columbia*, 863 A.2d 814, 2004 D.C. App. LEXIS 639 (2004).

The words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Alfaro v. United States*, 859 A.2d 149, 2004 D.C. App. LEXIS 459 (2004).

In interpreting the statute, the Court of Appeals first step is to determine whether the statute's language is clear and unambiguous; if it is, the court gives effect to the plain meaning of the statute. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

For the purpose of statutory interpretation, in examining the statutory language, it is axiomatic that the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

For the purpose of statutory interpretation, the Court of Appeals is required to give effect to a statute's plain meaning if the words are clear and unambiguous. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

In interpreting a statute, the court first looks to the plain meaning of its language, and if it is clear and unambiguous and will not produce an absurd result, the court will look no further. *In re M.O.R.*, 851 A.2d 503, 2004 D.C. App. LEXIS 319 (2004).

In interpreting a statute, court first looks to the plain meaning of its language, and if it is clear and unambiguous and will not produce an absurd result, court will look no further. *Beaner v. United States*, 845 A.2d 525, 2004 D.C. App. LEXIS 75 (2004).

A court may refuse to adhere strictly to the plain wording of a statute in order to effectuate the legislative purpose, as determined by a reading of the legislative history or by an examination of the statute as a whole. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Courts look to the plain meaning of the statute first, construing words according to their ordinary meaning. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Words of the statute should be construed according to their ordinary sense, and with the meaning commonly attributed to them. *UPS v. D.C. Dep't of Empl. Servs.*, 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

The words of a statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. *District of Columbia v. Cato Inst.*, 829 A.2d 237, 2003 D.C. App. LEXIS 475 (2003).

When the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry need go no further. *District of Columbia v. Cato Inst.*, 829 A.2d 237, 2003 D.C. App. LEXIS 475 (2003).

In certain circumstances it is appropriate to look beyond even the plain and unambiguous

language of a statute to understand the legislative intent. *District of Columbia v. Cato Inst.*, 829 A.2d 237, 2003 D.C. App. LEXIS 475 (2003).

Courts will look beyond the ordinary meaning of the words of a statute only where there are persuasive reasons for doing so. *District of Columbia v. Cato Inst.*, 829 A.2d 237, 2003 D.C. App. LEXIS 475 (2003).

In examining a statute, the court gives the words used the meaning ordinarily attributed to them. *District of Columbia v. Cato Inst.*, 829 A.2d 237, 2003 D.C. App. LEXIS 475 (2003).

The court will look beyond the ordinary meaning of the words of a statute only where there are persuasive reasons for doing so, which would include: (1) when the legislative history or alternative constructions reveal ambiguities; (2) the literal meaning would produce absurd results; and (3) when necessary to effectuate the statutory purpose as gleaned from the statute as a whole or its legislative history. *District of Columbia v. Cato Inst.*, 829 A.2d 237, 2003 D.C. App. LEXIS 475 (2003).

The words of a statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. 1618 Twenty-First St. Tenants' Ass'n v. Phillips Collection, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

In finding the ordinary meaning of terms in a statute, the use of dictionary definitions is appropriate in interpreting undefined terms. 1618 Twenty-First St. Tenants' Ass'n v. Phillips Collection, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

In interpreting statutory or regulatory provisions, court looks first to the plain meaning. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Where the words of a statute are unambiguous, courts apply their plain meaning. In re Uwazih, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

Where the language of a statute is clear and unambiguous, the court must apply its plain meaning. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

Courts start by looking to the plain meaning of the statute to determine the drafter's intent. *Carter v. State Farm Mut. Auto. Ins. Co.*, 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

The words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Carter v. State Farm Mut. Auto. Ins. Co.*, 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

Courts will look beyond the ordinary meaning of the words of a statute only where there are persuasive reasons for doing so. *Carter v. State Farm Mut. Auto. Ins. Co.*, 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

If the words of the statute are clear and unambiguous, then the trial court must give effect to their plain and ordinary meaning. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

Court expects that the intent of the law-maker is to be found in the language used, and court construes those words according to their plain meaning. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

The language of a statute should be construed according to its plain meaning in its usual sense. *Leonard v. District of Columbia*, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

In interpreting statutory language, the words are generally given their ordinary meaning. *Leonard v. District of Columbia*, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

When language of statute is plain and unambiguous, court looks to its plain meaning in order to interpret it. *Slater v. Biehl*, 793 A.2d 1268, 2002 D.C. App. LEXIS 65 (2002).

Normally, the plain and ordinary meaning of the statute is the meaning intended by the legislature. *Slater v. Biehl*, 793 A.2d 1268, 2002 D.C. App. LEXIS 65 (2002).

In interpreting statutory language, words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. *Hager v. United States*, 791 A.2d 911, 2002 D.C. App. LEXIS 40 (2002), writ of certiorari denied by 543 U.S. 846, 125 S. Ct. 290, 160 L. Ed. 2d 74, 2004 U.S. LEXIS 6032, 73 U.S.L.W. 3208 (2004).

In construing the plain language of a statute, court must give the words chosen by the legislature the ordinary sense and meaning traditionally attributed to them. In re C.L.M., 766 A.2d 992, 2001 D.C. App. LEXIS 39 (2001).

Where the meaning of the statute is discernible from its plain language, that plain meaning will be given effect. In re C.L.M., 766 A.2d 992, 2001 D.C. App. LEXIS 39 (2001).

When interpreting the language of a statute, courts examine the plain meaning of the language used and, absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive. In re M.W., 756 A.2d 913, 2000 D.C. App. LEXIS 186 (2000).

Policy and purpose.

Under statutory interpretation principles, a court may refuse to adhere strictly to the plain wording of a statute in order to effectuate the legislative purpose, as determined by a reading of the legislative history or by an examination of the statute as a whole. *Mesa v. United States*, 875 A.2d 79, 2005 D.C. App. LEXIS 256 (2005).

Courts construe statutory words in a manner that is not at variance with the policy of the legislation as a whole. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

A court construing a statute must inquire whether its interpretation is plainly at variance with the policy of the legislation as a whole and must remain faithful more to the purpose than the word. *Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P.*, 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

While statutory words are to be accorded their ordinary meaning absent indication of a contrary legislative intent, statutory meaning is to be derived, not from the reading of a single sentence or section, but from consideration of an entire enactment against the backdrop of its policies and objectives. *Carillon House Tenants' Ass'n v. D.C. Rental Hous. Comm'n*, 793 A.2d 461, 2002 D.C. App. LEXIS 47 (2002), amended by 2002 D.C. App. LEXIS 99 (D.C. May 1, 2002).

Power and duty of court.

It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms. *McNeely v. United States*, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

In interpreting a statute, it is not within the judicial function to rewrite the statute, or to supply omissions in it, in order to make it more fair. *In re Te.L.*, 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

The last word concerning the meaning of the applicable statute belongs to the court, for the judiciary is the final authority on issues of statutory construction. *Abadie v. D.C. Contract Appeals Bd.*, 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

When the plain meaning of the statutory language is unambiguous, the intent of the legislature is clear, and judicial inquiry need go no further. *1618 Twenty-First St. Tenants' Ass'n v. Phillips Collection*, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

The judiciary is the final authority on issues of statutory construction. *Belcon Inc. v. D.C. Water & Sewer Auth.*, 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

If the statute's language is clear and unambiguous and will not produce an absurd result, court will look no further. *Richard Milburn Pub. Charter Alternative High Sch. v. Cafritz*, 798 A.2d 531, 2002 D.C. App. LEXIS 293 (2002).

As between two possible interpretations of a statute, by one of which it would be unconsti-

tutional and by the other valid, a court's plain duty is to adopt the one which will save the act. *Keels v. United States*, 785 A.2d 672, 2001 D.C. App. LEXIS 243 (2001).

Where the precise question at issue in an appeal from an administrative decision is ultimately a matter of law on issues of statutory construction, the Court of Appeals remains the final authority. *Upchurch v. D.C. Dep't of Empl. Servs.*, 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Court of Appeals is the final authority on issues of statutory construction. *Genstar Stone Prods. Co. v. Dep't of Empl. Servs.*, 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

Presumptions.

In interpreting statute, district court must presume that Congress meant precisely what it said, as statutory language represents clearest indication of Congressional intent, and presumption is rebuttable only in rare cases in which literal application of statute will produce result demonstrably at odds with intentions of its drafters. *Am. Lands Alliance v. Norton*, 242 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 1485 (2003), vacated in part by 360 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 26321 (D.D.C. 2003).

Statutes enacted by a legislature are presumed not to apply to the legislature itself. *District of Columbia Fin. Responsibility & Mgmt. Auth. v. Concerned Senior Citizens of the Roosevelt Tenant Assoc.*, 129 F.Supp.2d 13, 2000 U.S. Dist. LEXIS 18865 (2000).

When a local provision is borrowed directly from a federal statute, the Council of the District of Columbia is presumed to have borrowed the judicial construction thereof as well. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

The goal of statutory interpretation is to give effect to the purpose of the legislature. *Cass v. District of Columbia*, 829 A.2d 480, 2003 D.C. App. LEXIS 487 (2003), amended by 2003 D.C. App. LEXIS 616 (D.C. Oct. 6, 2003).

When Congress borrows terms of art in which are accumulated the legal tradition and meanings of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken. *1618 Twenty-First St. Tenants' Ass'n v. Phillips Collection*, 829 A.2d 201, 2003 D.C. App. LEXIS 481 (2003).

Under the elements-based rule of statutory construction to determine whether offenses merge, if each offense contains at least one element which the other one does not, there is a presumption that the legislature does not intend that the offenses merge. *Malloy v. United States*, 797 A.2d 687, 2002 D.C. App. LEXIS 91 (2002).

Because the legislature must be presumed to have acted rationally and reasonably, with an awareness of the goals of the statutory scheme as a whole, the courts eschew interpretations that lead to unreasonable results, that create obvious injustice, or that produce results at variance with the policies intended to be furthered by the legislation. *In re C.L.M.*, 766 A.2d 992, 2001 D.C. App. LEXIS 39 (2001).

Questions of law.

Construction of a statute is a question of law. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

Review.

Issues of statutory construction are subject to de novo review. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Statute as a whole.

The court does not read statutory words in isolation; the language of surrounding and related paragraphs may be instrumental to understanding them. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Statutory construction is a holistic endeavor, and at a minimum, must account for a statute's full text, language, structure, and subject matter. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Courts must give effect to all of the provisions of a statute, so that no part of it will be either redundant or superfluous. *Thompson v. District of Columbia*, 863 A.2d 814, 2004 D.C. App. LEXIS 639 (2004).

For the purpose of statutory interpretation, each provision of the statute should be given effect, so as not to read any language out of a statute whenever a reasonable interpretation is available that can give meaning to each word in the statute. *Providence Hosp. v. D.C. Dep't of Empl. Servs.*, 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

A basic principle of statutory construction is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous. *District of Columbia v. Gould*, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

A basic principle of statutory construction is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provi-

sion superfluous. *In re Te.L.*, 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

Each provision of a statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Statutory interpretation is a holistic endeavor, and, at a minimum, must account for a statute's full text, language as well as punctuation, structure, and subject matter. *Cook v. Edgewood Mgmt. Corp.*, 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Statutory provisions must be interpreted together, not in isolation. *In re Uwazih*, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

Statutory meaning is to be derived, not from the reading of a single sentence or section, but from consideration of an entire enactment against the backdrop of its policies and objectives. *In re Uwazih*, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

It is a canon of statutory interpretation that one looks at the particular statutory language within the context of the whole legislative scheme when legislative intent is to be determined. *Carter v. State Farm Mut. Auto. Ins. Co.*, 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

Each provision of the statute should be given effect, so as not to read any language out of a statute whenever a reasonable interpretation is available that can give meaning to each word in the statute. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

The meaning of statutory language must be derived from a consideration of the entire enactment against the backdrop of its policies and objectives. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

When the interaction between several statutory provisions is in question, the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous. *Leonard v. District of Columbia*, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

In construing two subsections of a statute, the court must give effect to the whole statute in light of its underlying objectives. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Courts construe statutory provisions not in isolation, but together with other related provisions. *Olden v. United States*, 781 A.2d 740, 2001 D.C. App. LEXIS 210 (2001).

Common rules of statutory construction require court to avoid conclusions that effectively read language out of a statute whenever a

reasonable interpretation is available that can give meaning to each word in the statute. *School St. Assocs. v. District of Columbia*, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

Strict construction.

The rule of strict construction of criminal statutes does not require that the law be given its most narrow purpose nor so strictly con-

strued as to defeat the intention of the legislature. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

Criminal statutes should be strictly construed, and ambiguities should be resolved in favor of the defendant. *Belay v. District of Columbia*, 860 A.2d 365, 2004 D.C. App. LEXIS 570 (2004).

§ 45-602. Words importing singular number to include plural.

Words importing the singular number shall be held to include the plural, and vice versa, except where such construction would be unreasonable.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Cross references. — Acts and resolutions of Council, rules of construction, see § 1-301.45 et seq.

Prior Codifications. — 1981 Ed., § 49-202. 1973 Ed., § 49-202.

CASE NOTES

In general.

Term “who,” as used in child custody statutes, is not necessarily singular and, thus, does not limit court’s authority to award joint custody to parents. *D.C. Code 1981, § 16-911(a)(5)* (repealed). *Ysla v. Lopez*, 684 A.2d 775, 1996 D.C. App. LEXIS 237 (1996).

Rule of statutory construction that singular words include plural, unless such construction would be unreasonable, is not conclusive on whether statute permitting “any person” to petition for adoption allows adoption by unmarried couple; reasonableness requirement is categorical, not case-by-case, limitation that effectively turns analysis back to adoption statute itself. *D.C. Code 1981, §§ 16-302, 49-202*. In re *M.M.D.*, 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Interpreting “person” to include “persons” in adoption statute allowing any person to petition for adoption is not “unreasonable” as used in statute requiring singular words to include plural unless such construction would be unreasonable. *D.C. Code 1981, §§ 16-302, 49-202*. In re *M.M.D.*, 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

Rule of statutory construction that singular should be read as plural is limited by reasonableness requirement that says in effect that rule does not apply if another approach, based on other sound interpretative criteria, is more persuasive. *D.C. Code 1981, § 49-202*. In re *M.M.D.*, 662 A.2d 837, 1995 D.C. App. LEXIS 141 (1995).

§ 45-603. Gender rule of construction.

Unless the Council of the District of Columbia specifically provides that this section shall be inapplicable to a particular act or section, all the words thereof importing 1 gender include and apply to the other gender as well.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854; June 4, 1982, D.C. Law 4-111, § 2(a), 29 DCR 1684.)

Cross references. — Acts and resolutions of Council, rules of construction, see § 1-301.45 et seq.

Prior Codifications. — 1981 Ed., § 49-203. 1973 Ed., § 49-203.

Legislative history of Law 4-111. — Law 4-111, the “Anti-Sex-Discriminatory Language

Act and Uniform Disposition of Unclaimed Property Act of 1980 Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 9, 1982 and March 23, 1982, respectively. Signed by the

Mayor on April 12, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

CASE NOTES

Marriage.

Adoption of gender rule of construction did not require interpretation of marriage statute to authorize same-sex marriages. D.C. Code

1981, §§ 30-101 to 30-121, 49-203. *Dean v. District of Columbia*, 653 A.2d 307, 1995 D.C. App. LEXIS 8 (1995).

§ 45-604. “Person” to include partnerships and corporations.

The word “person” shall be held to apply to partnerships and corporations, unless such construction would be unreasonable, and the reference to any officer shall include any person authorized by law to perform the duties of his office, unless the context shows that such words were intended to be used in a more limited sense.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Cross references. — Acts and resolutions of Council, rules of construction, see § 1-301.45 et seq.

Prior Codifications. — 1981 Ed., § 49-204. 1973 Ed., § 49-204.

§ 45-605. “Executor” to include “administrator”.

Wherever the word “executor” is used it shall include “administrator,” and vice versa, unless such application of the term would be unreasonable.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Cross references. — Acts and resolutions of Council, rules of construction, see § 1-301.45 et seq.

Prior Codifications. — 1981 Ed., § 49-205. 1973 Ed., § 49-205.

§ 45-606. Oath to include affirmation.

Wherever an oath is required, an affirmation in judicial form, if made by a person conscientiously scrupulous about taking an oath, shall be deemed a sufficient compliance.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Prior Codifications. — 1981 Ed., § 49-206. 1973 Ed., § 49-206.

§ 45-607. “Insane person” and “lunatic”.

The words “Insane person” and “lunatic” shall include every idiot, non compos, lunatic, and insane person.

(Mar. 3, 1901, 31 Stat. 1189, ch. 854.)

Prior Codifications. — 1981 Ed., § 49-207. 1973 Ed., § 49-207.

TITLE 46. DOMESTIC RELATIONS.

SUBTITLE I. GENERAL.

Chapter

1. Age of Majority.
2. Child Support and Medical Support Enforcement.
3. Interstate Family Support.
4. Marriage.
5. Premarital Agreements.
6. Property Rights.

SUBTITLE II. REPEALED PROVISIONS.

7. Uniform Support [Repealed].

SUBTITLE I. GENERAL.

CHAPTER 1. AGE OF MAJORITY.

Sec.

46-101. Enumerated.

§ 46-101. Enumerated.

Notwithstanding any rule of common or other law to the contrary in effect on July 22, 1976, the age of majority in the District of Columbia shall be 18 years of age, except that this chapter shall not affect any common-law or statutory right to child support.

(July 22, 1976, D.C. Law 1-75, § 2, 23 DCR 1177.)

Section references. — This section is referred to in § 38-201.

Prior Codifications. — 1981 Ed., § 30-401. 1973 Ed., § 21-101 note.

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Com-

mittee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Construction and application.
Custody and support of children.
Law governing.
Parental consent.
Right of action.
Validity.

Construction and application.

Decedent was not minor at time of his death from multiple gunshot wounds, and thus dece-

dent's mother, who alleged that District of Columbia emergency medical personnel inappropriately ceased giving life-giving care to decedent, could not sustain § 1983 due process claim against District and District officials for alleged deprivation of her liberty interest in decedent's companionship. *Wright v. District of Columbia*, 799 F.Supp.2d 1, 2011 U.S. Dist. LEXIS 83006 (2011).

Parent's obligation to pay child support did not cease when his child became 18, even

though parent was ordered to pay child support in divorce decree rendered subsequent to enactment of D.C. Code 1981, § 30-401, providing that age of majority shall be 18, except that act shall not affect any common law or statutory right to child support. *Butler v. Butler*, 496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

The laws of the District of Columbia extend the duty to support one's child until the child reaches the age of 21. *Nix v. Watson*, 120 WLR 653 (Super. Ct. 1991).

Custody and support of children.

Under District of Columbia law, parent is obligated to support adult child who is incapacitated by disability. *Lasley v. Georgetown Univ.*, 842 F. Supp. 593, 1994 U.S. Dist. LEXIS 1112 (1994).

In deciding to terminate commitment for care of neglected child after child reached age of 18 years but before he attained age of 21 years, trial court was required to determine whether commitment was no longer necessary to safeguard child's welfare and whether termination was in child's best interest and could not base such decision solely on interests and safety of public. D.C. Code 1981, §§ 16-2301, 16-2310(a), 16-2320(a), 16-2322, 16-2323(d), (d)(2), 30-401. In re T.R.J., 661 A.2d 1086, 1995 D.C. App. LEXIS 143 (1995).

Maryland order terminating former husband's child support obligation under divorce decree and ordering that case be dismissed without prejudice was not final, and thus, District of Columbia trial court was not required to give it full faith and credit, in suit brought by former wife seeking child support on basis that District of Columbia, unlike Maryland, provides right to child support until child is 21; separation agreement indicated that it was to be governed by District of Columbia law, former wife resided in District of Columbia for at least six months, and former husband, who apparently resided in Maryland, was employed in the District. D.C. Code 1981, §§ 16-916, 30-307; U.S. Const. Art. 4, § 1. *Rollins v. Rollins*, 602 A.2d 1121, 1992 D.C. App. LEXIS 30 (1992).

Parents have common-law duty to support their physically or mentally disabled children, even after children have reached age of majority. *Nelson v. Nelson*, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

D.C. Code 1981, § 30-401, providing that age of majority shall be 18, except that act shall not affect any common law or statutory right to child support, did not supersede common-law

right to child support, but merely defined age for common-law support purposes. *Butler v. Butler*, 496 A.2d 621, 1985 D.C. App. LEXIS 457 (1985).

Issue of validity of trial court's award of custody of two minor children to mother became moot after children reached age of majority. D.C. Code 1981, §§ 16-4501 to 16-4524, 16-4501(a)(1, 3), 16-4502(1), 30-401. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Law governing.

Employment of parent in the District of Columbia, and his presence here because of such employment, was not enough to extend his child support obligation until his child reached her 21st birthday, when the law of the jurisdiction which established the support obligation would have permitted its termination at the 18th birthday, and the law of the jurisdiction where the dependent was domiciled would also permit the termination of any child support obligation at the 18th birthday. *Smith v. Oestreich*, 118 WLR 2481 (Super. Ct. 1990).

Parental consent.

Under District of Columbia law, university did not owe parents of adult son duty to secure parents' informed consent before performance of medical embolization procedure on son, as son, who was 18 years old, was competent adult at time of procedure. *Lasley v. Georgetown Univ.*, 842 F. Supp. 593, 1994 U.S. Dist. LEXIS 1112 (1994).

Right of action.

Under District of Columbia law, parents had no independent cause of action to recover expenses incurred in caring for their adult son as result of university's alleged negligence respecting medical embolization procedure; any expenses incurred in caring for son, who was 18 years old at time of procedure, could be recovered in his own name. *Lasley v. Georgetown Univ.*, 842 F. Supp. 593, 1994 U.S. Dist. LEXIS 1112 (1994).

Validity.

Defendant, not being an 18- to 21-year-old child not entitled to receive support, did not have standing to challenge this provision on the ground that it impermissibly distinguishes between 18- to 21-year-olds who marry or work full time and 18- to 21-year-olds who attend school. *Monroe v. Monroe*, 125 WLR 1081 (Super. Ct. 1997).

CHAPTER 2. CHILD SUPPORT AND MEDICAL SUPPORT ENFORCEMENT.

Subchapter I. Child Support Enforcement

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*Subchapter I. Child Support Enforcement.***§ 46-201. Definitions.**

For the purposes of this subchapter, the term:

- (1) "Business day" means a day on which District offices are open for regular business.
- (2) "Caretaker" means a parent, relative, guardian, or other person whose

needs are included in a public assistance payment for a dependent child and who is using those payments for the benefit of the dependent child.

(3) "Collection and Disbursement Unit" or "CDU" means the centralized unit operated by the IV-D agency for the collection and disbursement of support payments as required under section 454B of title IV, part D of the Social Security Act, approved August 22, 1996 (110 Stat. 2207; 42 U.S.C. § 654B).

(4) "Court" means the Superior Court of the District of Columbia.

(5) "Custodian" means the parent, relative, guardian, or other person with whom the dependent child resides.

(6) "Dependent child" means any child whose support is required by § 16-916, or any child to whom a responsible relative owes a duty of support.

(7) "Duty of support" means:

(A) Any duty of support imposed by statute or by common law;

(B) Any duty of support imposed by court order, decree, or judgment, whether interlocutory or final; and

(C) Any duty of reimbursement imposed by law for monies expended by the District for support, including public assistance and foster care.

(8) "Earnings" means any remuneration based on employment, including wages, salaries, annuities, retirement benefits, unemployment compensation, and disability benefits.

(9) "Entity" means a partnership, firm, association, corporation, sole proprietorship, company, organization, or other business, including a governmental or nonprofit organization.

(10) "IV-D agency" means the Child Support Services Division of the Office of the Attorney General for the District of Columbia, or successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of support orders.

(11) "Holder" means any person, firm, association, corporation, government official, or other entity that is believed to possess property of an obligor, including earnings or other income.

(12) "Mayor" means the Mayor of the District of Columbia or the Mayor's designee.

(13) "Notice to withhold" means a written notice informing a holder that an obligor's support order is enforceable by withholding and directing the holder to implement the withholding.

(14) "Obligee" means a person or entity who is entitled to receive support pursuant to a support order.

(15) "Obligor" means a person who is required to pay support pursuant to a support order.

(16) "Order to withhold" means an order that requires a holder to turn over earnings or other income in a specified amount to a specified payee rather than to an individual to whom the earnings or other income would otherwise be payable.

(17) "Other income" means any income available to an individual whether or not derived from remuneration based on employment.

(18) "Public assistance" means assistance granted under the District's Temporary Assistance for Needy Families Program or Program on Work, Employment, and Responsibility pursuant to Chapter 2 of Title 4.

(19) "Responsible relative" means a person obligated under law for the support of a dependent child.

(20) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

(Feb. 24, 1987, D.C. Law 6-166, § 2, 33 DCR 6710; Apr. 20, 1999, D.C. Law 12-241, § 13, 46 DCR 905; Apr. 20, 1999, D.C. Law 12-264, § 28(b), 46 DCR 2118; Apr. 12, 2000, D.C. Law 13-91, § 146, 47 DCR 520; Apr. 3, 2001, D.C. Law 13-269, § 108(a), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(a), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(a), 53 DCR 1886.)

Cross references. — Interstate family support, notice of registration of order, see § 46-306.05.

Section references. — This section is referred to in §§ 46-301.01 and 46-305.01.

Prior Codifications. — 1981 Ed., § 30-501.

Effect of amendments. — D.C. Law 13-91 in par. (13) validated a previously made technical amendment.

D.C. Law 13-269 designated former par. (1) as (1A); inserted a new par. (1); and inserted pars. (8A), (8B), (9A), (9B), (15A), and (15B).

D.C. Law 15-205 added par. (2A); and, in par. (8B), substituted "the Child Support Enforcement Division of the Office of the Attorney General for the District of Columbia," for "the organizational unit of the District government,".

D.C. Law 16-100 rewrote the section, which had read:

"For the purposes of this subchapter, the term:

"(1) 'Business day' means Monday through Friday, excluding District and federal holidays.

"(1A) 'Caretaker' means a parent, relative, guardian, or other person whose needs are included in a public assistance payment for a dependent child and who is using those payments for the benefit of the dependent child.

"(2) 'Child support' means any payment that a responsible relative is ordered to make because of a duty of support.

"(2A) 'Collection and Disbursement Unit' means the centralized unit operated by the

IV-D agency for the collection and disbursement of support payments as required under section 454B of title IV, part D of the Social Security Act, approved August 22, 1996 (110 Stat. 2207; 42 U.S.C. § 654b).

"(3) 'Court' means the Superior Court of the District of Columbia.

"(4) 'Custodian' means the parent, relative, guardian, or other person with whom the dependent child resides.

"(5) 'Dependent child' means any child for whom the District is providing public assistance pursuant to subchapter 5 of Chapter 2 of Title 4 and whose support is required by § 16-916; or any child to whom an obligor owes a duty of support.

"(6) 'District' means the government of the District of Columbia.

"(7) 'Duty of support' means any duty of support imposed by statute or by common law; any duty of support imposed by order of the Court, decree, or judgment, whether interlocutory or final, or whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise; any duty of reimbursement imposed by law for moneys expended by the District for support, including public assistance and foster care; or any duty of support imposed by any other section of this subchapter.

"(8) 'Earnings' means any remuneration based on employment including, but not limited to, wages, salaries, annuities, retirement benefits, unemployment compensation, and disability benefits.

"(8A) 'Entity' means a partnership, firm, association, corporation, sole proprietorship, company, organization, or other business, including a governmental and nonprofit organization.

"(8B) 'IV-D agency' means the Child Support Enforcement Division of the Office of the Attorney General for the District of Columbia, or successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of support orders.

"(9) 'Holder' means any person, firm, association, corporation, or government official whom the Mayor believes has possession of property of a responsible relative, including, but not limited to, earnings or other income of the responsible relative.

"(9A) 'Immediate withholding' means withholding conducted pursuant to § 46-207(a-1).

"(9B) 'Initiated withholding' means withholding conducted pursuant to § 46-208(c).

"(10) 'Mayor' means the Mayor of the District of Columbia or the Mayor's designee.

"(11) 'Obligor' means any responsible relative or person ordered to pay pursuant to any order or decision listed in § 46-207.

"(12) 'Other income' means any income available to an individual whether or not derived from remuneration based on employment.

"(13) 'Public assistance' means assistance granted under the District's Temporary Assistance for Needy Families Program or Program on Work, Employment, and Responsibility pursuant to subchapter 5 of Chapter 2 of Title 4.

"(14) 'Recipient' means a dependent child and, if applicable, the caretaker for the child.

"(15) 'Responsible relative' means any person obligated under law for the support of a dependent child.

"(15A) 'Spousal support' means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child for whom the individual also owes support and that is enforced by the IV-D agency.

"(15B) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

"(16) 'Withholding order' means any legal or equitable order that requires a holder to turn over earnings or other income in a specified amount to a specified payee rather than to an individual to whom the earnings or other income would otherwise be payable."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 13 of Self-Sufficiency Promotion Temporary Amendment Act of 1998 (D.C. Law 12-230, April 20, 1999, law notification 46 DCR 4143).

For temporary (225 day) amendment of section, see § 107 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(a) of D.C. Law 16-42 rewrote the section to read as follows:

"Sec. 2. Definitions.

"For the purposes of this act, the term:

"(1) 'Business day' means a day on which District offices are open for regular business.

"(2) 'Caretaker' means a parent, relative, guardian, or other person whose needs are included in a public assistance payment for a dependent child and who is using those payments for the benefit of the dependent child.

"(3) 'Collection and Disbursement Unit' or 'CDU' means the centralized unit operated by the IV-D agency for the collection and disbursement of support payments as required under section 454B of title IV, part D of the Social Security Act, approved August 22, 1996 (110 Stat. 2207; 42 U.S.C. § 654B).

"(4) 'Court' means the Superior Court of the District of Columbia.

"(5) 'Custodian' means the parent, relative, guardian, or other person with whom the dependent child resides.

"(6) 'Dependent child' means any child whose support is required by D.C. Official Code § 16-916, or any child to whom a responsible relative owes a duty of support.

"(7) 'Duty of support' means:

"(A) Any duty of support imposed by statute or by common law;

"(B) Any duty of support imposed by court order, decree, or judgment, whether interlocutory or final; and

"(C) Any duty of reimbursement imposed by law for monies expended by the District for

support, including public assistance and foster care.

"(8) 'Earnings' means any remuneration based on employment, including, but not limited to, wages, salaries, annuities, retirement benefits, unemployment compensation, and disability benefits.

"(9) 'Entity' means a partnership, firm, association, corporation, sole proprietorship, company, organization, or other business, including a governmental or nonprofit organization.

"(10) 'TV-D agency' means the Child Support Services Division of the Office of the Attorney General for the District of Columbia, or successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of support orders.

"(11) 'Holder' means any person, firm, association, corporation, government official, or other entity that is believed to possess property of an obligor, including earnings or other income.

"(12) 'Mayor' means the Mayor of the District of Columbia or the Mayor's designee.

"(13) 'Notice to withhold' means a written notice informing a holder that an obligor's support order is enforceable by withholding and directing the holder to implement the withholding.

"(14) 'Obligee' means a person or entity who is entitled to receive support pursuant to a support order.

"(15) 'Obligor' means a person who is required to pay support pursuant to a support order.

"(16) 'Order to withhold' means an order that requires a holder to turn over earnings or other income in a specified amount to a specified payee rather than to an individual to whom the earnings or other income would otherwise be payable.

"(17) 'Other income' means any income available to an individual, whether or not derived from remuneration based on employment.

"(18) 'Public assistance' means assistance granted under the District's Temporary Assistance for Needy Families Program or Program on Work, Employment, and Responsibility pursuant to the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-201.01 et seq.).

"(19) 'Responsible relative' means a person obligated under law for the support of a dependent child.

"(20) 'Support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an

administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary (90-day) addition of section, see § 107(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(a) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(a) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(a) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(a) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(a) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — Law 6-166, “District of Columbia Child Support Enforcement Amendment Act of 1985,” was introduced in Council and assigned Bill No. 6-134, which was referred to the Committee on Human Services and reassigned to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 8, 1986, and September 23, 1986, respectively. Signed by the Mayor on October 9, 1986, it was assigned Act No. 6-212 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-241. — Law 12-241, the “Self-Sufficiency Promotion Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and

December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Legislative history of Law 13-269. — Law 13-269, the “Child Support and Welfare Reform Compliance Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-254, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 8, 2001, it was assigned Act No. 13-559 and transmitted to both Houses of Congress for its review. D.C. Law 13-269 became effective on April 3, 2001.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004,” was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 16-100. — Law 16-100, the “Income Withholding Transfer and Revision Amendment Act of 2005,” was introduced in Council and assigned Bill No. 16-319 which was referred to the committee on Judiciary. The Bill was adopted on first and second readings on January 4, 2006, and February 7, 2006, respectively. Signed by the Mayor on February 27, 2006, it was assigned Act No. 16-302 and transmitted to both Houses of Congress for its review. D.C. Law 16-100 became effective on May 12, 2006.

CASE NOTES

ANALYSIS

Dependent child.
Residence of child.

Dependent child.

Child, now 22 years of age, is still considered to be a “dependent child” since her father still owes her a duty of support pursuant to the parties’ separation agreement. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Residence of child.

Even though child was not living in the

custodial parent’s home at the time the request for wage withholding was made, the court recognized that many students temporarily live outside their parents’ home while attending college, and child still does reside with the custodial parents. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 46-202. Findings of Council.

The Council of the District of Columbia finds that:

- (1) Dependent children shall be maintained, as completely as possible,

from the resources of their parents, thereby relieving or avoiding, at least in part, the burden borne by the citizens of the District for public welfare programs.

(2) The existing remedies pertaining to the support of dependent children are to be augmented by the additional remedies mandated or recommended in the Child Support Enforcement Amendments of 1984 (42 U.S.C. § 651 et seq.).

(3) Enactment of this legislation will maximize the potential for children to receive timely, regular, and adequate support from their parents, safeguard the basic rights of all parties, and utilize the resources of the District in the most efficient manner.

(Feb. 24, 1987, D.C. Law 6-166, § 3, 33 DCR 6710.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-502.

CASE NOTES

In general.

To the extent possible, a child's parents are primarily responsible for his or her support, not

the District of Columbia. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 46-202.01. Collection and Disbursement Unit.

(a) The IV-D agency is established as the centralized Collection and Disbursement Unit for the collection and disbursement of support payments and shall operate the CDU either directly or through a contract or cooperative agreement with another entity.

(b) The Collection and Disbursement Unit shall collect and disburse support payments under the following support orders, and obligors and holders required to pay support pursuant to these orders shall submit payments to the CDU for disbursement to the obligee:

(1) All support orders enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.);

(2) All support orders not enforced by the IV-D agency where the support order was initially issued in the District on or after January 1, 1994, and for which withholding of the obligor's earnings or other income has commenced; and

(3) All other support orders for which the Court has ordered that payments be made through the Collection and Disbursement Unit, or for which withholding of the obligor's earnings or other income has commenced.

(c) The IV-D agency shall operate the Collection and Disbursement Unit in coordination with the automated system the IV-D agency maintains pursuant to § 46-226.10.

(d)(1) The Collection and Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology, to the maximum extent that is feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures:

(A) For receipt of payments from obligors, holders, and other states, and

for disbursements to obligees, the IV-D agency, and the IV-D agencies of other states;

(B) For accurate identification of payments;

(C) To ensure prompt disbursement of each obligee's share of any payment; and

(D) To furnish to any obligor or obligee, upon request, timely information on the current status of support payments required to be made through the Collection and Disbursement Unit pursuant to subsection (b) of this section.

(2) The Collection and Disbursement Unit shall not be required to convert and maintain, in automated form, records of payments made before August 22, 1996, for support orders subject to withholding that are not enforced by the IV-D agency.

(e) The Collection and Disbursement Unit shall disburse all amounts payable within 2 business days after receipt from the employer or other holder if sufficient information identifying the payee is provided. The Collection and Disbursement Unit may delay the disbursement of collections toward arrearages until any appeal with respect to such arrearages has been resolved.

(Feb. 24, 1987, D.C. Law 6-166, § 3a, as added Apr. 3, 2001, D.C. Law 13-269, § 108(b), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(b), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(b), 53 DCR 1886; Mar. 2, 2007, D.C. Law 16-191, § 71, 53 DCR 6794.)

Effect of amendments. — D.C. Law 15-205 rewrote the section.

D.C. Law 16-100 rewrote the section, which had read:

"(a)(1) The IV-D agency is established as the centralized Collection and Disbursement Unit for the collection and disbursement of support payments and shall operate this unit either directly or through a contract or cooperative agreement with another entity.

"(2) The Court shall continue to operate the Collection and Disbursement Unit, pursuant to a memorandum of understanding or other cooperative agreement with the IV-D agency, until the IV-D agency has arranged with a private contractor to operate the Collection and Disbursement Unit or has made other arrangements for its operation, and until the transfer of all collection and disbursement functions to another entity is complete.

"(b) The Collection and Disbursement Unit shall collect and disburse support payments under support orders in the following cases:

"(1) All cases enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.);

"(2) All cases not enforced by the IV-D agency in which the support order was initially issued in the District on or after January 1, 1994, and in which withholding of the obligor's earnings or other income has commenced; and

"(3) All other cases in which the court has ordered that payments be made through the Collection and Disbursement Unit, or in which withholding of the non-custodial parent's income or other earnings has commenced.

"(c) The Court shall be the instrumentality for withholding earnings or other income under this subchapter.

"(d) The Collection and Disbursement Unit shall conduct its operations in coordination with the automated system the IV-D agency maintains pursuant to § 42-226.10.

"(e)(1) The Collection and Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology, to the maximum extent that is feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures:

"(A) For receipt of payments from parents, holders, and other states, and for disbursements to custodial parents and other obligees, the IV-D agency, and the agencies of other states;

"(B) For accurate identification of payments;

"(C) To ensure prompt disbursement of the custodial parent's share of any payment; and

"(D) To furnish to any parent, upon request, timely information on the current status of support payments required to be made by or to the parent through the Collection and Disbursement Unit pursuant to subsection (b) of this section.

"(2) The Collection and Disbursement Unit shall not be required to convert and maintain, in automated form, records of payments made before August 22, 1996, in cases subject to wage withholding not enforced by the IV-D agency.

"(f) The Collection and Disbursement Unit shall distribute all amounts payable within 2 business days after receipt from the employer or other holder if sufficient information identifying the payee is provided. The Collection and Disbursement Unit may delay the distribution of collections toward arrearages until any appeal with respect to such arrearages has been resolved.

"(g) The IV-D agency and the Court, as applicable, shall use the automated system the IV-D agency maintains pursuant to § 42-226.10, to the maximum extent that is feasible, to assist and facilitate the collection and disbursement of support payments, including:

"(1) Transmission of orders and notices to employers and other holders for the withholding of income;

"(A) Within 2 business days after receipt of notice of the withholding (including identification of the income source subject to withholding) from a court, a state, a holder, the Federal Parent Locator Service, or another source recognized by the District; and

"(B) Using uniform formats prescribed by federal regulation or policy;

"(2) Ongoing monitoring to promptly identify failures to make timely payment of support; and

"(3) Automatic use of enforcement procedures if payments are not timely made."

D.C. Law 16-191, in subsec. (d), validated a previously made technical correction.

Temporary Amendment of Section. — Section 3(b) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 3a. Collection and Disbursement Unit.

"(a) The IV-D agency is established as the centralized Collection and Disbursement Unit for the collection and disbursement of support payments and shall operate the CDU either directly or through a contract or cooperative agreement with another entity.

"(b) The Collection and Disbursement Unit shall collect and disburse support payments under the following support orders, and obligors and holders required to pay support pursuant to these orders shall submit payments to the CDU for disbursement to the obligee:

"(1) All support orders enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.);

"(2) All support orders not enforced by the IV-D agency where the support order was initially issued in the District on or after January 1, 1994, and for which withholding of the obli-

gor's earnings or other income has commenced; and

"(3) All other support orders for which the Court has ordered that payments be made through the Collection and Disbursement Unit, or for which withholding of the obligor's earnings or other income has commenced.

"(c) The IV-D agency shall operate the Collection and Disbursement Unit in coordination with the automated system the IV-D agency maintains pursuant to section 27j.

"(d)(1) The Collection and Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology, to the maximum extent that is feasible, efficient, and economical, for the collection and disbursement of support payments, including procedures:

"(A) For receipt of payments from obligors, holders, and other states, and for disbursements to obligees, the IV-D agency, and the IV-D agencies of other states;

"(B) For accurate identification of payments;

"(C) To ensure prompt disbursement of each obligee's share of any payment; and

"(D) To furnish to any obligor or obligee, upon request, timely information on the current status of support payments required to be made through the Collection and Disbursement Unit pursuant to subsection (b) of this section.

"(2) The Collection and Disbursement Unit shall not be required to convert and maintain, in automated form, records of payments made before August 22, 1996, for support orders subject to withholding that are not enforced by the IV-D agency.

"(e) The Collection and Disbursement Unit shall disburse all amounts payable within 2 business days after receipt from the employer or other holder if sufficient information identifying the payee is provided. The Collection and Disbursement Unit may delay the disbursement of collections toward arrearages until any appeal with respect to such arrearages has been resolved."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR).

For temporary (225 day) addition of section, see § 107(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of § 30-502.1 [1981 Ed.], see § 7(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(b) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(b) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of § 30-502.1 [1981 Ed.], see § 107(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) authorization of a centralized support payment collection and distribution unit, see § 107(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of § 30-502.1 [1981 Ed.], see § 107(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of § 30-502.1 [1981 Ed.], see § 107(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) authorization of a centralized support payment collection and distribution unit, see § 107(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(b) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(b) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(b) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 46-203. Subrogation of District; notice to caretakers.

(a) The District shall be subrogated to the right of the caretaker to prosecute or maintain any support action. If a Court orders support to be paid by a responsible relative, the District shall be subrogated to the right of the caretaker to receive past, present, and future payments under an order or decree, and any money judgment entered under an order or decree shall be considered to be in favor of the District.

(b) The Mayor shall inform any individual who is a caretaker on February 24, 1987, of the provisions of this subchapter within 120 days after February 24, 1987. Any individual who becomes a caretaker after February 24, 1987,

shall be informed of the provisions of this subchapter when the individual becomes a caretaker.

(Feb. 24, 1987, D.C. Law 6-166, § 4, 33 DCR 6710.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-503.

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

§ 46-204. Amendment of order establishing alimony, child support, or maintenance; award as money judgment.

(a) Any order requiring payment of an amount of child support, regardless of whether the amount of the child support was the subject of a voluntary agreement of the parties, may be modified upon a showing that there has been a substantial and material change in the needs of the child or the ability of the responsible relative to pay since the day on which the order was issued. A showing or proof of a change in circumstances shall not be required to modify a support order that is being reviewed or modified pursuant to § 16-916.01(r)(3) or (r)(4).

(b) An award of alimony, child support, or maintenance is a money judgment that becomes absolute, vested, and upon which execution may be taken, when it becomes due.

(c) No modification of an award of alimony, child support, or maintenance may be retroactive, except that a modification may be permitted for the period during which a petition for modification is pending. The modification may then be permitted from the date on which the opposing party was given notice of the petition for modification according to statute or court rule.

(d)(1) A petition for modification of a child support order filed pursuant to § 23-112a may be adjudicated after the petitioner has been released from imprisonment.

(2) A petition for modification of a child support order filed pursuant to § 23-112a(b) shall be deemed filed as of the date the petition is filed in open court during sentencing at a criminal proceeding.

(3) Incarceration for contempt for failure to pay child support pursuant to § 46-225.02 shall not constitute a change in circumstances sufficient to warrant a modification of support under subsection (a) of this section.

(Feb. 24, 1987, D.C. Law 6-166, § 5, 33 DCR 6710; Dec. 10, 1987, D.C. Law 7-47, § 2, 34 DCR 6849; Apr. 3, 2001, D.C. Law 13-269, § 108(c), 48 DCR 1270; Mar. 30, 2004, D.C. Law 15-130, § 203(a), 51 DCR 1615; May 24, 2005, D.C. Law 15-357, § 103, 52 DCR 1999; June 22, 2006, D.C. Law 16-138, § 3, 53 DCR 3650.)

Section references. — This section is referred to in §§ 23-112a, 16-916.01, 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-504.

Effect of amendments. — D.C. Law 13-269 added the last sentence to subsec. (a).

D.C. Law 15-130, in the last sentence of subsec. (a), substituted “reviewed or modified pursuant to § 16-916.01(o)(2) or (o)(2A)” for “reviewed pursuant to § 16-916.1(o)(2)”.

D.C. Law 15-357 added subsec. (d).

D.C. Law 16-138, in subsec. (a), substituted “§ 16-916.01(r)(3) or (r)(4)” for “§ 16-916.01(o)(2) or (o)(2A)”; and added par. (d)(3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 203(a) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 203(a) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Section 3(c) of D.C. Law 16-42 added subsec. (d)(3) to read as follows:

“(3) Incarceration for contempt for failure to pay child support pursuant to section 26b shall not constitute a change in circumstances sufficient to warrant a modification of support under subsection (a) of this section.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114), § 7(c) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(c) of the Child

Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(c) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(c) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(c) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(c) and (d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(c) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 203(a) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 203(a) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 203(a) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 203(a) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

For temporary (90 day) amendment of section, see § 3(c) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(c) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 7-47. — Law 7-47 was introduced in Council and assigned Bill No. 7-92, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 14, 1987, and September 29, 1987, respectively. Signed by the Mayor on October 16, 1987, it was assigned Act No. 7-80 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-130. — Law 15-130, the "Medical Support Establishment and Enforcement Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-219, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 28, 2004, it was assigned Act No. 15-331 and transmitted to both Houses of Congress for its review. D.C. Law 15-130 became effective on March 30, 2004.

Legislative history of Law 15-357. — Law 15-357, the "Omnibus Public Safety Ex-offender Self-sufficiency Reform Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-785, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on November 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-744 and transmitted to both Houses of Congress for its review. D.C. Law 15-357 became effective on May 24, 2005.

Legislative history of Law 16-138. — For Law 16-138, see notes following § 16-916.01.

Effective date. — Applicability: Section 4 of D.C. Law 16-138 provided: "This act shall apply as of April 1, 2007."

CASE NOTES

ANALYSIS

Ability to pay.
Change in circumstances.
Discretion of court.
Effect of final orders.
Foreign orders.
Installment payments.
Jurisdiction.
Modification.
Parental misconduct.
Retroactive awards.
Review.
Voluntary reduction in income.

Ability to pay.

Although decision whether to grant or deny motion to suspend payment of child support is within sound discretion of trial court, court may not modify support order without showing there has been substantial and material change in ability of responsible relative to pay since the date on which order was issued. D.C. Code 1981, § 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Increase in noncustodial parent's ability to pay can, by itself, provide a proper basis for an increase in child and spousal support, beyond or without any proven increase in needs of children or other spouse. D.C. Code 1981, §§ 16-916(a), 30-504. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Increase in husband's income could support modification of his child support and alimony obligations, even if needs of his wife and chil-

dren had not also increased. D.C. Code 1981, §§ 16-916(a), 30-504. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Change in circumstances.

As long as ex-husband had notice and a fair opportunity to counter any showing of a need to revise child support amount, no sound reason existed why the trial judge, having found the need for support revision in light of changed circumstances, namely change from joint custody to ex-wife having sole custody, could not order the limited retroactivity of child support to the date when the issue was raised on the court's own motion to protect the interests of the children; once judge had ordered a change in the terms of custody, ex-husband was on notice of realistic possibility that parties' child support arrangement would be modified accordingly to ensure that the children's interests would be protected. *Wilson v. Craig*, 987 A.2d 1160, 2010 D.C. App. LEXIS 27 (2010).

Trial court may modify existing child support order only upon showing by moving party that there has been substantial and material change in needs of the child or ability of the responsible relative to pay since the date on which the order was issued. D.C. Code 1981, § 30-504(a). *Galbis v. Nadal*, 734 A.2d 1094, 1999 D.C. App. LEXIS 158 (1999).

Though statutory factors that would justify departure from child support guidelines may rebut presumption that there has been substantial or material change in circumstances that would warrant modification of child sup-

port order, based on variance between amount of order and amount resulting from application of guidelines to current conditions, no such factor can by itself provide the showing of changed circumstances necessary for modification of child support. D.C. Code 1981, §§ 16-916.1(l)(1, 5), (o)(3), (o)(3)(A), 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

In considering motion to modify child support order, court may not give any effect to determination that noncustodial parent needs temporary period of reduced child support to pay debts unless court first has found the changed circumstances necessary for modification of child support order. D.C. Code 1981, §§ 16-916.1(l)(5), 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

Where findings on which initial child support order was based included most of father's indebtedness, that indebtedness could not be used to establish a substantial or material change of circumstances that would take the case outside child support guideline so as to allow period of reduced support for payment of indebtedness. D.C. Code 1981, §§ 16-916.1(l), 30-504(a). *Robinson v. Robinson*, 629 A.2d 562, 1993 D.C. App. LEXIS 192 (1993).

In absence of controlling separation agreement, husband's child support obligation may be modified upon showing that there has been substantial and material change in needs of child or ability of responsible relative to pay since day order was issued. D.C. Code 1981, § 30-504. *Nevarez v. Nevarez*, 626 A.2d 867, 1993 D.C. App. LEXIS 134 (1993).

Original child support order may be modified only upon showing that there has been material change in circumstances of the parties. D.C. Code 1981, § 30-504. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Custodial parent failed to allege any facts from which court could have concluded either that there had been a material and substantial change in parties' financial circumstances since day foreign child support order was entered or that there had been a change in parties' child-custody arrangement and, thus, level of support, which was otherwise sufficient, would not be modified solely because foreign order had been registered in the District of Columbia. *Prisco v. Stroup*, 132 WLR 2513 (Super. Ct. 2004).

Noncustodial parent's claim that incarceration is a substantial and material change in circumstances warranting a modification of his child support obligation was barred by the equitable clean hands doctrine. *J.W. v. J.A.*, 121 WLR 449 (Super. Ct. 1993).

Respondent carried his burden of establishing a material change of circumstances and his

child support obligation was permanently reduced. *Rappaport v. Galler*, 120 WLR 1037 (Super. Ct. 1992).

Whether the original change in circumstances is voluntary or involuntary, in the absence of permanent disability, the obligor must, after a reasonable period of time, make good faith efforts to produce sufficient income to enable the obligor to make the payments. *Rappaport v. Galler*, 120 WLR 1037 (Super. Ct. 1992).

The good faith nature of a change in circumstances is a factor that the court considers, employing 3 factors in determining good faith: (1) The original circumstances of the change; (2) the obligor's efforts to continue making payments; and (3) the duration of the change. *Rappaport v. Galler*, 120 WLR 1037 (Super. Ct. 1992).

Discretion of court.

Trial court did not abuse its discretion in concluding that divorced mother's temporary decrease in income did not warrant an increase in divorced father's child support obligation; there was evidence that mother's unemployment was voluntary and, furthermore, mother testified that, as of the date of trial on her motion seeking an increase in child support payments, she had already obtained an employment offer with an estimated annual salary of \$93,000. *Prisco v. Stroup*, 947 A.2d 455, 2008 D.C. App. LEXIS 227 (2008), remanded by 3 A.3d 316, 2010 D.C. App. LEXIS 508 (D.C. 2010).

Whether there has been a substantial and material change in circumstances warranting modification of child support is a question committed to the sound discretion of the trial court, and its decision in the matter will not be reversed on appeal without a clear showing of abuse of discretion. *Prisco v. Stroup*, 947 A.2d 455, 2008 D.C. App. LEXIS 227 (2008), remanded by 3 A.3d 316, 2010 D.C. App. LEXIS 508 (D.C. 2010).

Effect of final orders.

Since a pendente lite child support order is "child support" as defined in § 30-501(2) because it is imposed by a court order based upon interlocutory "duty of support" pursuant to § 30-501(7), an obligee's right to support, whether ordered as part of a final decree or pendente lite, is vested when the payment becomes due and cannot be abridged. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

A permanent support order may not be retroactively modified except back to the date the opposing party was given notice of the request for modification. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

The parties' judgment of absolute divorce was a final order of the court, and as such, was

enforceable according to its terms. Therefore, each unpaid child support payment became an enforceable money judgment. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

An obligee's right to support, whether ordered as part of a final decree or pendente lite, is vested when the payment becomes due, and cannot be abridged. *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989).

Foreign orders.

Once a foreign court's child support order is registered in the District of Columbia, the trial court has authority to modify the registered order, subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the District of Columbia. *Prisco v. Stroup*, 947 A.2d 455, 2008 D.C. App. LEXIS 227 (2008), remanded by 3 A.3d 316, 2010 D.C. App. LEXIS 508 (D.C. 2010).

Installment payments.

Since an obligee's rights to installment payments under a consent order are protected by the finality of that order, the liability of the non-custodial parent is limited by that order for its duration as well. *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989).

The obligee's right to accrued but unpaid installments of a pendente lite support award is absolute and vested, and the order creating that right is sufficiently final to be enforceable. The obligor is protected by the same finality. *Soto v. Gonzalez*, 120 WLR 194 (Super. Ct. 1992).

Jurisdiction.

Public policy favors exercise of jurisdiction where the District of Columbia is the residence of a plaintiff who sues for support of minor resident child. *Winston v. Zeitz*, 120 WLR 2581 (Super. Ct. 1992).

Modification.

Settlement agreement executed in Georgia with respect to child support was merged into divorce decree and thus, was an order subject to modification governed by child support guidelines and modification statute. *Mazza v. Hollis*, 947 A.2d 1177, 2008 D.C. App. LEXIS 235 (2008).

If a settlement agreement with respect to child support is merged into the trial court's order of divorce, the binding force of the amount of child support is based on the authority of the court's order; in that situation, the parties' agreement has been adopted by the court as its own determination of the proper disposition, and the principles embodied in the child support guidelines apply to a modification request, rather than requirement of substan-

tial and material, unforeseen change in circumstances. *Mazza v. Hollis*, 947 A.2d 1177, 2008 D.C. App. LEXIS 235 (2008).

Trial court did not abuse its discretion in denying divorced mother's request to modify divorced father's child support obligation; trial court took into account the 14% increase in father's income, but considered that it "alone is not a substantial and material change warranting a modification," when viewed in the context of all the child-related expenses father incurred in addition to child support. *Mazza v. Hollis*, 947 A.2d 1177, 2008 D.C. App. LEXIS 235 (2008).

Doctrine of res judicata did not apply to bar petition for child support against father following voluntary vacation of prior child support order; no issues were litigated in prior order, vacation of prior order did not eliminate father's ongoing obligation to support child until she reached age of majority, and second petition raised issues that were distinct from prior order. *Sollars v. Cully*, 904 A.2d 373, 2006 D.C. App. LEXIS 445 (2006).

Court abused its discretion in denying father's second motion to reduce his child support obligation to mother of his younger child without first considering his alleged proof of child support payments made to mother of his older children; father renewed his motion immediately after court's denial of his first motion to preserve his right to retroactive reduction in payments and stated that he was prepared, when hearing was held 18 months later, to prove his child support to mother of older children. D.C. Code 1981, § 30-504(c). *Lopez v. Ysla*, 733 A.2d 330, 1999 D.C. App. LEXIS 148 (1999).

Existing child support order is prerequisite to trial court's modification of amount of child support, and thus provisions of statutes concerning modification and child support guidelines apply only if there is existing child support order. D.C. Code 1981, §§ 16-916.1, 30-504(a). *Clark v. Clark*, 638 A.2d 667, 1994 D.C. App. LEXIS 30 (1994).

Fact that father was not entitled to retroactive suspension of child support payments did not mean that father was not entitled to show that he was entitled to suspension of payments as of date he filed motion for suspension. D.C. Code 1981, § 30-504(c). *Garcia v. Andrade*, 622 A.2d 64, 1993 D.C. App. LEXIS 72 (1993).

Motion for modification of child support is not to be used as pretense to relitigate equities of prior divorce decree. D.C. Code 1981, § 30-504. *Graham v. Graham*, 597 A.2d 355, 1991 D.C. App. LEXIS 158 (1991).

Although both § 16-914(a) and this section allow for modification of custody and support decrees ad infinitum, these sections do not

permit court to hear custody and support cases over which it has no personal jurisdiction. *Holt v. Holt*, 118 WLR 553 (Super. Ct. 1990).

Parental misconduct.

Applying the clean hands doctrine to the misconduct of a custodial parent in such a way as to prevent an increase in the amount of child support which would otherwise be justified would arguably be against public policy; however, applying the doctrine to the misconduct of a noncustodial parent to bar a reduction request would not transgress that public policy and in fact may be consistent with such a policy. *J.W. v. J.A.*, 121 WLR 449 (Super. Ct. 1993).

Retroactive awards.

Under statute prohibiting retroactive modifications of child support, child's staying with father for an eight-week period did not support trial court's decision to deny mother's request for retroactive award of child support to cover a subsequent time when child lived with mother. *Wilkins v. Bell*, 917 A.2d 1074, 2007 D.C. App. LEXIS 83 (2007).

Retroactive award of additional child support to the date respondent was served was appropriate on account of respondent's delaying tactics. *Murdock v. Huguley*, 117 WLR 613 (Super. Ct. 1989).

Review.

Trial court's order refusing to lower former

husband's alimony and child support obligations would be reversed and remanded for reconsideration, where trial court incorrectly stated that husband had voluntarily left his job but husband had actually lost his job due to his employer's bankruptcy. D.C. Code 1981, § 30-504(a). *Mizrachi v. Mizrachi*, 683 A.2d 137, 1996 D.C. App. LEXIS 187 (1996).

The Superior Court interpreted "any" order to include an order from Maryland. *Winston v. Zeitz*, 120 WLR 2581 (Super. Ct. 1992).

Voluntary reduction in income.

Voluntary changes in ability to pay are not material, because a voluntary change is not a change in the individual's actual ability to pay. *E.M.Z. v. G.R.Z.*, 120 WLR 569 (Super. Ct. 1991).

Husband incarcerated for shooting wife could not be ordered in divorce action to pay monthly child support of \$50 as debt or judgment deferred until his release from prison, as rule preventing parent from evading child support responsibility by voluntarily reducing income did not apply; although husband shot wife voluntarily, there was no suggestion that he did so with purpose to be arrested, spend next seven years and more in prison, and thereby voluntarily reduce his income. D.C. Code 1981, §§ 16-916.1, 16-916.1(e)(2), 30-504(b). *Lewis v. Lewis*, 637 A.2d 70, 1994 D.C. App. LEXIS 12 (1994). = —

§ 46-205. Contents of support order.

All support orders, whether they are original orders or modifications of existing orders, shall contain the following:

(1) A provision requiring the withholding of support payments from the obligor's earnings or other income in accordance with this subchapter;

(2) Notice that the support order shall be enforceable by withholding as specified in §§ 46-207 and 46-207.01;

(3) Notice that payments required by a support order specified in § 46-202.01(b) shall be made through the Collection and Disbursement Unit and any other payments shall be considered a gift and shall not offset the duty of support;

(4) A provision that directs the parties to file and update the information specified in § 46-226.02 with the IV-D agency and the Court in accordance with that section;

(5) Terms providing for the payment of the child's medical expenses, whether or not health insurance is available to pay for those expenses, which shall include a provision directing the obligor and obligee to notify the IV-D agency and the Court of the following:

(A) Any change in either the obligor's or the obligee's access to health insurance coverage for the child or the reasonableness of the costs of coverage; and

(B) All health insurance policy information necessary to enroll the child in the health insurance to which the obligor or obligee has access;

(6) Notice that if the obligor is required under the support order to provide health insurance coverage for a child, the obligor's employer will, upon receipt of notice of the health insurance coverage provision, enroll the child in health insurance coverage and deduct the premiums from the obligor's earnings in accordance with §§ 1-307.41, 1-307.42, and subchapter II of this chapter;

(7) Notice that the amount and name of the obligor and obligee of all support orders entered, modified, registered, or enforced in the District after December 23, 1997 shall be reported to a consumer credit reporting agency if the obligor owes overdue support in the amount of \$1,000 or more;

(8) The name, address, and telephone number of the obligor's current employer; and

(9) Notice that an order to withhold may be changed upon a motion by a party or the IV-D agency for a reapportionment of periodic arrears payments pursuant to § 46-208(c).

(Feb. 24, 1987, D.C. Law 6-166, § 6, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(a), 37 DCR 3720; Mar. 16, 1995, D.C. Law 10-217, § 2(a), 41 DCR 8040; Apr. 18, 1996, D.C. Law 11-110, § 32, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-170, § 2(a), 43 DCR 4480; Apr. 3, 2001, D.C. Law 13-269, § 108(d), 48 DCR 1270; Mar. 30, 2004, D.C. Law 15-130, § 203(b), 51 DCR 1615; Dec. 7, 2004, D.C. Law 15-205, § 3403(c), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(c), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-505.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

"All Court orders or decrees directing the payment of child or spousal and child support, whether they are original orders or modifications of existing orders, shall contain the following information in addition to the notice required by § 46-206:

"(1) For an original support order or modification of a support order that is effective on or after January 1, 1994, notice that support payments shall be withheld from earnings or other income immediately, unless the Court finds there is good cause not to impose immediate withholding or the parties agree in writing to an alternative method of payment;

"(1A) In the case of a support order that is issued or modified on or after November 1, 1990, a finding of good cause not to require immediate withholding shall be based on at least:

"(A) A written explanation by the court of why immediate wage withholding would not be in the best interest of the child; and

"(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations;

"(2) Notice that if withholding commences, all payments shall be made through the Court registry and any other payments shall be considered a gift and shall not offset the duty of support ordered by the Court; and

"(3) A provision that directs the absent parent to keep the IV-D Program informed of the absent parent's current employer, and whether the parent has access to health coverage at a reasonable cost and, if so, the health policy information."

D.C. Law 15-130 rewrote par. (5) which had read:

"(5) Notice that if the obligor provides health insurance coverage for the child and changes to another employer that provides health care coverage, the IV-D agency or the Collection and Disbursement Unit will notify the new employer of the health insurance coverage provision in the support order, and that receipt of the notice by the employer shall operate to enroll the child in the obligor's health plan with his new employer, unless the obligor contests the notice in accordance with rules adopted by the Mayor or the Superior Court, as appropriate; and"

D.C. Law 15-205, in pars. (3) and (4), substituted "Court" for "Collection and Disbursement Unit"; in par. (5), validated a previously made technical correction; and rewrote par. (6) which

had read as follows: "(6) Notice that the amount and name of the obligor and obligee of all support orders entered, modified, registered, or enforced in the District after December 23, 1997 shall be reported to a consumer credit reporting agency if the obligor's support obligations are over 30 days past due."

D.C. Law 16-100 rewrote the section, which had read:

"All support orders, whether they are original orders or modifications of existing orders, shall contain the following information in addition to the notice required by § 46-206:

"(1) For an original support order or modification of a support order that is effective on or after January 1, 1994, notice that support payments shall be withheld from earnings or other income immediately, unless the Court finds there is good cause not to impose immediate withholding or the parties agree in writing to an alternative method of payment;

"(1A) In the case of a support order that is issued or modified on or after November 1, 1990, notice that a finding of good cause not to require immediate withholding shall be based on at least:

"(A) A written explanation by the court of why immediate wage withholding would not be in the best interest of the child; and

"(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations;

"(2) Notice that if withholding commences, all payments shall be made through the Collection and Disbursement Unit and any other payments shall be considered a gift and shall not offset the duty of support ordered by the Court;

"(3) A provision that directs the parties to file and update with the IV-D agency and with the Court the information required by § 46-226.02;

"(4) Terms providing for the payment of the child's medical expenses, whether or not health insurance is available to pay for those expenses, which shall include a provision directing the obligor and obligee to notify the IV-D agency and the Court of the following:

"(A) Any change in either the obligor's or the obligee's access to health insurance coverage for the child or the reasonableness of the costs of coverage; and

"(B) All health insurance policy information necessary to enroll the child in the health insurance to which the obligor or obligee has access;

"(5) Notice that if the obligor is required under the support order to provide health insurance coverage for a child, the obligor's employer will, upon receipt of notice of the health insurance coverage provision, enroll the child in health insurance coverage and deduct the premiums from the obligor's earnings in accordance with §§ 1-307.41, 1-307.42, and subchapter II of this chapter.

dance with §§ 1-307.41, 1-307.42, and subchapter II of this chapter.

"(6) Notice that the amount and name of the obligor and obligee of all support orders entered, modified, registered, or enforced in the District after December 23, 1997 shall be reported to a consumer credit reporting agency if the obligor owes overdue support in the amount of \$1000 or more."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Child Support Enforcement Temporary Amendment Act of 1994 (D.C. Law 10-210, March 14, 1995, law notification 42 DCR 1526).

For temporary (225 day) amendment of section, see § 2(a) of Child Support Enforcement Temporary Amendment Act of 1995 (D.C. Law 11-47, September 20, 1995, law notification 42 DCR 5506).

For temporary (225 day) amendment of section, see § 2(a) of Child Support Enforcement Temporary Amendment Act of 1996 (D.C. Law 11-148, May 20, 1996, law notification 43 DCR 4353).

For temporary (225 day) amendment of section, see § 7(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 203(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 203(b) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Section 3(d) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 6. Contents of support order.

"All support orders, whether they are original orders or modifications of existing orders, shall contain the following:

"(1) A provision requiring the withholding of support payments from the obligor's earnings or other income in accordance with this act;

"(2) Notice that the support order shall be enforceable by withholding as specified in sections 8 and 8a;

"(3) Notice that payments required by a support order specified in section 3a(b) shall be made through the Collection and Disbursement Unit and any other payments shall be considered a gift and shall not offset the duty of support;

"(4) A provision that directs the parties to file and update the information specified in section 27b with the IV-D agency and the Court in accordance with that section;

"(5) Terms providing for the payment of the child's medical expenses, whether or not health insurance is available to pay for those expenses, which shall include a provision directing the obligor and obligee to notify the IV-D agency and the Court of the following:

"(A) Any change in either the obligor's or the obligee's access to health insurance coverage for the child or the reasonableness of the costs of coverage; and

"(B) All health insurance policy information necessary to enroll the child in the health insurance to which the obligor or obligee has access;

"(6) Notice that if the obligor is required under the support order to provide health insurance coverage for a child, the obligor's employer will, upon receipt of notice of the health insurance coverage provision, enroll the child in health insurance coverage and deduct the premiums from the obligor's earnings in accordance with sections 2 and 3 of the Medicaid Benefits Protection Act of 1994, effective March 14, 1995 (D.C. Law 10-202; D.C. Official Code §§ 1-307.41, 1-307.42), and the Medical Support Establishment and Enforcement Amendment Act of 2004, effective March 30, 2004 (D.C. Law 15-130; D.C. Official Code § 46-251.01 et seq.);

"(7) Notice that the amount and name of the obligor and obligee of all support orders entered, modified, registered, or enforced in the District after December 23, 1997 shall be reported to a consumer credit reporting agency if the obligor owes overdue support in the amount of \$1,000 or more;

"(8) The name, address, and telephone number of the obligor's current employer; and

"(9) Notice that an order to withhold may be changed upon a motion by a party or the IV-D agency for a reapportionment of periodic arrears payments pursuant to section 9(c)."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(a) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(a) of the Child

Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary amendment of section, see § 7(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of § 30-505.1 [1981 Ed.], see § 7(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 7(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(d) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(d) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(d) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary addition of § 30-505.1 [1981 Ed.], see § 7(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(e) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(e) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) authorization of inclusion of social security numbers in records, see § 107(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(d) of the Child Support and

Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) authorization of inclusion of social security numbers in records, see § 107(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) authorization of inclusion of social security numbers in records, see § 107(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 108(d) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 203(b) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 203(b) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 203(b) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 203(b) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

For temporary (90 day) amendment of section, see § 3403(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(d) of Income Withholding Transfer and Revision Emergency Amendment Act of

2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(d) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 8-150. — For legislative history of D.C. Law 8-150, see Historical and Statutory Notes following § 46-224.01.

Legislative history of Law 10-217. — Law 10-217, the "Child Support Enforcement Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-740, which was referred to the Committee on the Judiciary with comments from the Committee on Human Services. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 15, 1994, it was assigned Act No. 10-354 and transmitted to both Houses of Congress for its review. D.C. Law 10-217 became effective on March 16, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-170. — Law 11-170, the "Child Support Enforcement Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-288, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1996, and July 6, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-317 and transmitted to both Houses of Congress for its review. D.C. Law 11-170 became effective on April 9, 1997.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-130. — For Law 15-130, see notes following § 46-204.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

CASE NOTES

In general.

Notification of father's attorney by social

worker, less than five business days before dispositional hearing, of availability of predis-

position report in which social worker made general recommendation that father pay child support for child who was removed from his care after he entered stipulation of neglect was insufficient to meet due notice requirement of child support statute; while five-day prefiling requirement was sufficient to apprise father of recommendations associated with issues already raised in neglect petition, developed in fact-finding hearing and included in court's written findings of fact and adjudication of neglect, it was not sufficient to inform father of new issues raised for first time thereafter which required different factual and legal fo-

cus. D.C. Code 1981, §§ 16-916.1, 16-2319(b), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Notice to father's counsel of availability of dispositional report, less than five business days before dispositional hearing, was inadequate to charge father with notice that child support question would be raised at hearing inasmuch as it did not provide father with adequate time to prepare and defend claim for support under Child Support Guidelines. D.C. Code 1981, §§ 16-916.1, 16-2319(d), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

§ 46-205.01. Inclusion of social security numbers in support records.

The social security number of each individual who is party to a support order shall be included in the Court and IV-D agency records relating to the order.

(Feb. 24, 1987, D.C. Law 6-166, § 6a, as added Apr. 3, 2001, D.C. Law 13-269, § 108(e), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(d), 53 DCR 1886.)

Effect of amendments. — D.C. Law 16-100, in the section heading, deleted "child and spousal" preceding "support"; and deleted "Superior" preceding "Court".

Temporary Amendment of Section. — Section 3(e) of D.C. Law 16-42, deleted "child and spousal" from the section heading and deleted "Superior".

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of § 30-505.1 [1981 Ed.], see § 7(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of § 30-505.1 [1981 Ed.], see § 7(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act

12-309, March 20, 1998, 45 DCR 1923), § 7(e) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(e) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) authorization of inclusion of social security numbers in records, see § 107(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) authorization of inclusion of social security numbers in records, see § 107(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) authorization of inclusion of social security numbers in records, see § 107(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(e) of Child Support and Welfare Re-

form Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(e) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of sec-

tion, see § 3(e) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-206. Service.

(a) In any case brought in Court under § 11-1101(a)(1), (3), (10), or (11) involving the establishment of support, the Clerk of the Court shall issue notice to the alleged responsible relative stating that a hearing to determine the matter of support has been scheduled. This hearing shall be scheduled within 45 days after the date the application is filed.

(b) Personal service of the notice may be made in the following manner:

(1) By delivering a copy of the notice to:

(A) The responsible relative;

(B) A person of suitable age and discretion who resides at the alleged responsible relative's dwelling house or usual place of abode; or

(C) A person of suitable age and discretion at the alleged responsible relative's place of employment; or

(2) By mailing the notice to the alleged responsible relative by certified mail, return receipt requested, and also by separate first-class mail. A certified mail notice of the complaint shall be sufficient, although unclaimed or refused by the respondent, when the first-class mail notice is not returned. Service by certified mail that is unclaimed or refused and first-class mail alone shall not be a sufficient basis to permit the entry of a default order of paternity in a case where the respondent fails to file an answer or otherwise fails to respond appropriately. Delivery may be made by a competent adult with no interest in the proceedings.

(c) The notice shall include the following:

(1) The name of the person for whom support is being claimed;

(2) A demand that the alleged responsible relative attend a hearing and the date, time, and place of the hearing;

(3) An explanation of the possible consequences of the alleged responsible relative's failure to attend the scheduled hearing;

(4) A demand that the alleged responsible relative bring to the hearing any record in the relative's possession of earnings received in the past 2 years, including receipts for earnings provided by an employer, or any wage and tax statements prepared by an employer setting forth earnings for tax purposes;

(5) A demand that the alleged responsible relative bring to the hearing documentation of the cost, comprehensiveness, and accessibility of any health insurance available to the responsible relative for the child;

(6) Notice that the alleged responsible relative may be represented by counsel at any stage of the proceedings;

(7) An explanation that a request for a continuance may result in the setting of interim support or the posting of collateral; and

(8) A copy of the complaint or petition.

(d) The custodian shall be given a notice containing the provisions outlined in subsection (c) of this section.

(e) Where a party is seeking a modification of a support order:

(1) The Clerk of the Court shall issue notice to the opposing party:

(A) Stating that a hearing to determine the matter of support has been scheduled;

(B) Containing the information stated in subsection (c) of this section; and

(C) Including a copy of the motion for modification;

(2) The hearing shall be scheduled within 45 days after the date the application is filed; and

(3) Personal service on the opposing party may be made in accordance with subsection (b) or (f) of this section.

(f) In any support enforcement action following entry of a support order, upon showing that a diligent effort, which includes more than a search of IV-D agency and Court records, has been made to ascertain the location of a party, the Court shall accept as adequate service on the party delivery by first-class mail of any pleading or notice to the most recent residential or employer address filed by the party with the IV-D agency or the Court pursuant to § 42-226.02.

(Feb. 24, 1987, D.C. Law 6-166, § 7, 33 DCR 6710; Aug. 17, 1991, D.C. Law 9-39, § 4(a), 38 DCR 4970; Apr. 3, 2001, D.C. Law 13-269, § 108(f), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(d), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(e), 53 DCR 1886.)

Section references. — This section is referred to in §§ 16-2343.03, 23-122a, 46-205, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-506.

Effect of amendments. — D.C. Law 13-269 substituted “existing support order” for “existing child support order” in subsec. (a); added “or” at the end of subsec. (b)(1)(B); and inserted subsec. (b-1).

D.C. Law 15-205 rewrote subsec. (b-1) which had read as follows: “(b-1) In any support enforcement action following entry of a support order, upon showing that a diligent effort, which includes more than a search of IV-D agency and Collection and Disbursement Unit records, has been made to ascertain the location of a party, the Superior Court shall accept as adequate service on the party delivery by first-class mail of any pleading or notice to the most recent residential or employer address filed by the party with the IV-D agency or the Collection and Disbursement Unit pursuant to § 46-226.02.”

D.C. Law 16-100, redesignated subsec. (b-1) as (f); added subsec. (e); and rewrote subssecs. (a) and (c).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 7(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(f) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(f) of D.C. Law 16-42, re-designated subsec. (b-1) as subsec. (f); and rewrote subssecs. (a) and (c), and added subsec. (e) to read as follows:

“(a) In any case brought in Court under D.C. Official Code § 11-1101(a)(1), (3), (10), or (11) involving the establishment of support, the Clerk of the Court shall issue notice to the alleged responsible relative stating that a hearing to determine the matter of support has been scheduled. This hearing shall be scheduled within 45 days after the date the application is filed.”

“(c) The notice shall include the following:

"(1) The name of the person for whom support is being claimed;

"(2) A demand that the alleged responsible relative attend a hearing and the date, time, and place of the hearing;

"(3) An explanation of the possible consequences of the alleged responsible relative's failure to attend the scheduled hearing;

"(4) A demand that the alleged responsible relative bring to the hearing any record in the relative's possession of earnings received in the past 2 years, including receipts for earnings provided by an employer, or any wage and tax statements prepared by an employer setting forth earnings for tax purposes;

"(5) Notice that the alleged responsible relative may be represented by counsel at any stage of the proceedings;

"(6) An explanation that a request for a continuance may result in the setting of interim support or the posting of collateral; and

"(7) A copy of the complaint or petition."

"(e) Where a party is seeking a modification of a support order:

"(1) The Clerk of the Court shall issue notice to the opposing party:

"(A) Stating that a hearing to determine the matter of support has been scheduled;

"(B) Containing the information stated in subsection (c) of this section; and

"(C) Including a copy of the motion for modification;

"(2) The hearing shall be scheduled within 45 days after the date the application is filed; and

"(3) Personal service on the opposing party

may be made in accordance with subsection (b) or (f) of this section."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(f) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(f) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(f) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(f) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20,

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 9-5. — For legislative history of D.C. Law 9-5, see Historical and Statutory Notes following § 46-226.01.

Legislative history of Law 9-39. — For legislative history of D.C. Law 9-39, see Historical and Statutory Notes following § 46-226.01.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

CASE NOTES

In general.

Notification of father's attorney by social worker, less than five business days before dispositional hearing, of availability of predisposition report in which social worker made general recommendation that father pay child support for child who was removed from his care after he entered stipulation of neglect was insufficient to meet due notice requirement of child support statute; while five-day prefiling requirement was sufficient to apprise father of recommendations associated with issues already raised in neglect petition, developed in fact-finding hearing and included in court's written findings of fact and adjudication of neglect, it was not sufficient to inform father of new issues raised for first time thereafter which required different factual and legal focus. D.C. Code 1981, §§ 16-916.1, 16-2319(b), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Notice to father's counsel of availability of predispositional report, less than five business days before dispositional hearing, was inadequate

to charge father with notice that child support question would be raised at hearing inasmuch as it did not provide father with adequate time to prepare and defend claim for support under Child Support Guidelines. D.C. Code 1981, §§ 16-916.1, 16-2319(d), 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

Defect in initial notice that issue of child support would be addressed in dispositional hearing was not cured by trial court's denial of motion to vacate child support award without prejudice to father filing motion for reconsideration setting forth specific factual reasons why support order should be reduced or vacated; not only was notice inadequate but court never afforded father opportunity for hearing on child support mandated by statute at any time after it could be assumed reasonably that he had received due notice of addition of child support issue to the proceedings. D.C. Code 1981, § 16-2325. In re X.B., 637 A.2d 1144, 1994 D.C. App. LEXIS 23 (1994).

In a paternity action, service of process under

this section, effectuated by leaving a copy of the Notice of Hearing and petition to establish paternity with a secretary at respondent's place

of employment, was not valid because it was not reasonably calculated to give actual notice. *L.T. v. J.C.*, 125 WLR 1309 (Super. Ct. 1997).

§ 46-207. Enforcement by withholding.

(a) All support orders, whether they are original orders or modifications of existing orders, that are effective on or after January 1, 1994, or that are effective on or after November 1, 1990 in cases being enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), shall be immediately enforceable by withholding, unless the Court finds there is good cause not to require immediate withholding or the parties agree in writing to an alternative method of payment.

(b) A finding of good cause not to require immediate withholding pursuant to subsection (a) of this section shall be based on at least:

(1) A written finding and explanation by the Court establishing the reasons that immediate withholding would not be in the best interests of the child; and

(2) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(c) A written agreement to an alternative method of payment shall be signed by the parties, and by the IV-D agency for support orders being enforced by the IV-D agency. The agreement shall be submitted to the Court for its review and approval, and entered into the Court's record.

(d) All support orders being enforced by the IV-D agency that are not immediately enforceable by withholding under subsection (a) of this section, including support orders subject to a finding of good cause or a written agreement to an alternative method of payment, shall become enforceable by withholding on the earliest of:

(1) The date the obligor requests that the withholding begin;

(2) The date the custodian requests that the withholding begin; provided, that the IV-D agency approves the request pursuant to procedures the IV-D agency adopts for determining that withholding is in the best interests of the child; or

(3) The date on which arrearages equal one month of support payments.

(e) A support order shall be enforceable by withholding pursuant to subsection (a) or (d) of this section regardless of whether or not the Court has entered an order authorizing withholding as a means of enforcement.

(f) All support orders not enforceable by withholding under subsection (a) or (d) of this section shall be enforceable by withholding on the effective date of a court order authorizing the withholding. The Court shall enter an order authorizing withholding, at the request of a party, upon a showing that:

(1) Arrearages equal one month of support payments; or

(2) Withholding is in the best interests of the child.

(Feb. 24, 1987, D.C. Law 6-166, § 8, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(b), 37 DCR 3720; Mar. 16, 1995, D.C. Law 10-217, § 2(b), 41 DCR 8040; Apr. 9, 1997, D.C. Law 11-170, § 2(b), 43 DCR 4480; Apr. 3, 2001, D.C.

Law 13-269, § 108(g), 48 DCR 1270; Mar. 30, 2004, D.C. Law 15-130, § 203(c), 51 DCR 1615; Dec. 7, 2004, D.C. Law 15-205, § 3403(e), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(f), 53 DCR 1886.)

Section references. — This section is referred to in §§ 16-911, 46-201, 46-208, 46-210, 46-211, 46-222, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-507.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“(a) The Court shall be the instrumentality for withholding earnings and other income under this chapter.

“(a-1) For an original support order or modification of a support order that is effective on or after January 1, 1994, notice that support payments shall be withheld from earnings or other income immediately, unless the Court finds there is good cause not to impose immediate withholding or the parties agree in writing to an alternative method of payment.

“(b) All Court orders or decrees directing the payment of child or spousal and child support, whether they are original orders or modifications of existing orders, shall contain the following:

“(1) Notice that support payments shall be withheld from earnings or other income as provided in subsection (a-1) of this section;

“(2) The name, address, and telephone number of the obligor’s current employer and a provision that the obligor has a duty to notify the Court within 10 days of any change of this information;

“(3) Notice that a withholding order may be changed upon motion from either party to request a reapportionment of periodic arrears payments to reflect a change in the obligor’s ability to pay;

“(4) In the case of a support order that is issued or modified on or after November 1, 1990, a finding of good cause not to require immediate withholding shall be based on at least:

“(A) A written explanation by the court of why immediate wage withholding would not be in the best interest of the child; and

“(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations; and

“(5) A provision that directs the absent parent to keep the IV-D Program informed of whether the absent parent has access to health coverage at a reasonable cost and, if so, the health policy information.

“(c) The following orders shall be enforceable by means of withholding earnings or other income:

“(1) Any order for child support with an income withholding order under § 16-916, Chapter 7 of this title, or § 4-213.01;

“(2) Any order for a wage garnishment or wage assignment for child support in effect on February 24, 1987, to the extent that the order does not exceed the maximum amounts permitted under 15 U.S.C. § 1673(b);

“(3) Any Court order or final decree of divorce requiring the payment of child support by a parent;

“(4) Any separation agreement requiring the payment of child support by a parent;

“(5) Any order registered pursuant to Chapter 7 of this title;

“(6) Any support order of another jurisdiction that has been docketed pursuant to § 46-222; and

“(7) Any order for spousal support when it is part of a child support obligation that is being enforced under Part D of Subchapter IV of the Social Security Act (42 U.S.C. § 651 et seq.), and the spouse or former spouse is living with the child.”

D.C. Law 15-130 rewrote par. (6) of subsec. (b) which had read:

“(6) Notice that if the obligor provides health insurance coverage for the child and changes to another employer that provides health care coverage, the IV-D agency or the Collection and Disbursement Unit will notify the new employer of the health insurance coverage provision in the support order, and that the employer’s receipt of the notice from the IV-D agency or Collection and Disbursement Unit shall operate to enroll the child in the obligor’s health plan with the new employer, unless the obligor contests the notice in accordance with rules adopted by the Mayor or the Superior Court, as appropriate;”

D.C. Law 15-205, in subsec. (a-1), substituted “Court” for “Collection and Disbursement Unit”; in subsec. (b), substituted “IV-D agency and the Court” for “Collection and Disbursement Unit” in par. (2), substituted “Court” for “Collection and Disbursement Unit” in par. (5), validated a previously made technical correction in par. (6), rewrote par. (7), and, in par. (8), substituted “Court” for “Collection and Disbursement Unit”. Prior to amendment, par. (7) of subsec. (b) had read as follows: “(7) Notice that the amount and name of the obligor and obligee of all support orders entered, modified, registered, or enforced in the District after December 23, 1997, shall be reported to a consumer credit reporting agency if the obligor’s support obligations are over 30 days past due; and”.

D.C. Law 16-100 rewrote the section, which had read:

“(a) Repealed.

“(a-1) For an original support order or modification of a support order that is effective on or after January 1, 1994, or that is effective on or after November 1, 1990 in cases being enforced pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), the Court shall direct immediately the withholding of support payments sufficient to satisfy the obligation from earnings or other income, unless the Court finds there is good cause not to impose immediate withholding, or the parties agree in writing to an alternative method of payment. Withholding implemented pursuant to this subsection shall be deemed immediate withholding.

“(a-2) A finding of good cause not to impose immediate withholding pursuant to subsection (a-1) of this section shall be based on at least:

“(1) A written finding and explanation by the Court establishing the reasons that implementing immediate withholding would not be in the best interests of the child; and

“(2) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

“(a-3) A written agreement to an alternative method of payment shall be signed by the parties, and by the IV-D agency in cases where there has been an assignment of support rights to the District of Columbia. The agreement shall be submitted to the Court for its review and approval, and entered into the Court's record.

“(b) All support orders, whether they are original orders or modifications of existing orders, shall contain the following:

“(1) Notice that support payments shall be withheld from earnings or other income as provided in subsection (a-1) of this section;

“(2) The name, address, and telephone number of the obligor's current employer and a provision that the obligor has a duty to notify the IV-D agency and the Court within 10 days of any change of this information;

“(3) Notice that a withholding order may be changed upon motion from either party to request a reapportionment of periodic arrears payments to reflect a change in the obligor's ability to pay;

“(4) In the case of a support order that is issued or modified on or after November 1, 1990, notice that a finding of good cause not to require immediate withholding shall be based on at least:

“(A) A written explanation by the court of why immediate wage withholding would not be in the best interest of the child;

“(B) If the modification of a support order is at issue, a written explanation that there is proof of timely payment of previously ordered support obligations; and

“(5) Terms providing for the payment of the child's medical expenses, whether or not health insurance is available to pay for those expenses, which shall include a provision directing the obligor and obligee to notify the IV-D agency, and the Court, of the following:

“(A) Any change in either the obligor's or the obligee's access to health insurance coverage for the child or in the reasonableness of the costs of coverage; and

“(B) All health insurance policy information necessary to enroll the child in the health insurance to which the obligor or obligee has access;

“(6) Notice that if the obligor is required under the support order to provide health insurance coverage for a child, the obligor's employer will, upon receipt of notice of the health insurance coverage provision, enroll the child in health insurance coverage and deduct the premiums from the obligor's earnings in accordance with §§ 1-307.41, 1-307.42, and subchapter II of this chapter.

“(7) Notice that the amount and name of the obligor and obligee of all support orders entered, modified, registered, or enforced in the District after December 23, 1997, shall be reported to a consumer credit reporting agency if the obligor owes overdue support in the amount of \$1000 or more.

“(8) A provision that directs the parties to file and update with the IV-D agency and with the Court the information required by § 46-226.02.

“(c) The following orders shall be enforceable by means of withholding earnings or other income:

“(1) Any support order with an income withholding order under § 16-916; Chapter 3 of this title; or § 4-213.01;

“(2) Any order for a wage garnishment or wage assignment for child support in effect on February 24, 1987, to the extent that the order does not exceed the maximum amounts permitted under 15 U.S.C. § 1673(b);

“(3) Any Court order or final decree of divorce requiring the payment of child support by a parent;

“(4) Any separation agreement requiring the payment of child support by a parent;

“(5) Any order registered for enforcement pursuant to Chapter 3 of this title;

“(6) Any support order entered in another jurisdiction against an obligor who has earnings or other income in the District of Columbia; and

“(7) Any order for spousal support when it is part of a child support obligation that is being enforced under Part D of Subchapter IV of the Social Security Act (42 U.S.C. § 651 et seq.), and the spouse or former spouse is living with the child.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(b) of Child Support Enforcement Temporary Amendment Act of 1994 (D.C. Law 10-210, March 14, 1995, law notification 41 DCR 1526).

For temporary (225 day) amendment of section, see § 2(b) of Child Support Enforcement Temporary Amendment Act of 1995 (D.C. Law 11-47, September 20, 1995, law notification 42 DCR 5506).

For temporary (225 day) amendment of section, see § 2(b) of Child Support Enforcement Temporary Amendment Act of 1996 (D.C. Law 11-148, May 20, 1996, law notification 43 DCR 4353).

For temporary (225 day) amendment of section, see § 7(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 7(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

For temporary (225 day) amendment of section, see § 203(c) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) amendment of section, see § 203(c) of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Section 3(g) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 8. Enforcement by withholding.

"(a) All support orders, whether they are original orders or modifications of existing orders, that are effective on or after January 1, 1994, or that are effective on or after November 1, 1990 in cases being enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), shall be immediately enforceable by withholding, unless the Court finds there is good cause not to require immediate withholding or the parties agree in writing to an alternative method of payment.

"(b) A finding of good cause not to require immediate withholding pursuant to subsection (a) of this section shall be based on at least:

"(1) A written finding and explanation by the Court establishing the reasons that immediate withholding would not be in the best interests of the child; and

"(2) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

"(c) A written agreement to an alternative method of payment shall be signed by the parties, and by the IV-D agency for support orders being enforced by the IV-D agency. The agreement shall be submitted to the Court for its review and approval, and entered into the Court's record.

"(d) All support orders being enforced by the IV-D agency that are not immediately enforceable by withholding under subsection (a) of this section, including support orders subject to a finding of good cause or a written agreement to an alternative method of payment, shall become enforceable by withholding on the earliest of:

"(1) The date the obligor requests that the withholding begin;

"(2) The date the custodian requests that the withholding begin; provided, that the IV-D agency approves the request pursuant to procedures the IV-D agency adopts for determining that withholding is in the best interests of the child; or

"(3) The date on which arrearages equal one month of support payments.

"(e) A support order shall be enforceable by withholding pursuant to subsection (a) or (d) of this section regardless of whether or not the Court has entered an order authorizing withholding as a means of enforcement.

"(f) All support orders not enforceable by withholding under subsection (a) or (d) of this section shall be enforceable by withholding on the effective date of a court order authorizing the withholding. The Court shall enter an order authorizing withholding, at the request of a party, upon a showing that:

"(1) Arrearages equal one month of support payments; or

"(2) Withholding is in the best interests of the child."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Section 3(h) of D.C. Law 16-42 added section to read as follows:

"Sec. 8a. Implementation of withholding.

"(a) The IV-D agency shall implement withholding for support orders enforceable by withholding pursuant to section 8 by issuing an order to withhold in the format prescribed by federal law and serving this order on the holder of the obligor's earnings or other income as follows:

"(1) For support orders that are immediately enforceable by withholding pursuant to section 8(a), within 2 business days after the date the support order is received if the holder's address is known, or, if the holder's address is unknown, within 2 business days after receiving or locating the holder's address.

"(2) For support orders that become enforceable by withholding pursuant to section 8(d), within 2 business days after the date the support order becomes enforceable by withholding if the holder's address is known, or, if the holder's address is unknown, within 2 business days after receiving or locating the holder's address.

"(3) For support orders enforceable by withholding pursuant to section 8(f), within 2 business days of receipt of a written request from the Court or a party that includes a copy of the support order and the order authorizing the withholding; provided, that the holder's address is known, or if the holder's address is unknown, within 2 business days after receiving the holder's address.

"(b) If an obligor changes employment while a withholding is in effect, the IV-D agency shall serve an order to withhold on the new holder within 2 business days after receiving or locating the new holder's address.

"(c) For the purpose of this section, the IV-D agency shall be deemed to have received the holder's address on the date the IV-D agency's computerized support enforcement system receives notice of income or an income source from a court, a state, a holder, the Federal Parent Locator Service, or another source recognized by the IV-D agency, or the date information regarding a newly hired employee is entered into the District of Columbia Directory of New Hires pursuant to section 27f. The Court shall provide the IV-D agency with information it receives concerning the name or address of a holder within 2 business days after receiving the information.

"(d) The IV-D agency shall use the automated system it maintains pursuant to section 27j to the maximum extent that is feasible to assist and facilitate the collection and disbursement of support payments and the implementation of withholding, including:

"(1) Transmission of orders to withhold to employers and other holders;

"(2) Ongoing monitoring to promptly identify failures to make timely payment of support; and

"(3) Automatic use of enforcement procedures if payments are not timely made.

"(e) Any person or entity may serve a notice to withhold in the format prescribed by federal law on a holder of an obligor's earnings or other income to inform the holder that the obligor's support order is enforceable by withholding and to require the holder to implement with-

holding in accordance with this act. A person or entity serving a notice to withhold shall provide a copy of the support order and the order authorizing the withholding to the holder with the notice.

"(f) Notices and orders to withhold may be served without prior notice to the obligor, by in person delivery, certified mail, first-class mail, facsimile, or electronically, if the holder can receive electronic notices."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(b) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and see § 2(b) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary amendment of section, see § 7(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act 1997 (D.C. Act 12-222, December 23, 1997, 44DCR 114).

For temporary amendment of section, see § 7(g) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(g) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(g) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(g) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(g) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(g) of the Child Support and Welfare Reform Compliance Congressional Re-

view Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(g) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 203(c) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) amendment of section, see § 203(c) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) amendment of section, see § 203(c) of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) amendment of section, see § 203(c) of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

For temporary (90 day) amendment of section, see § 3403(e) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(e) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act

of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(g) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) addition, see § 3(h) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(g) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

For temporary (90 day) addition, see § 3(h) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 8-150. — For legislative history of D.C. Law 8-150, see Historical and Statutory Notes following § 46-224.01.

Legislative history of Law 10-217. — For legislative history of D.C. Law 10-217, see Historical and Statutory Notes following § 46-205.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-130. — For Law 15-130, see notes following § 46-204.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

CASE NOTES

Withholding limits.

The 55 per centum limitation established under 15 U.S.C. § 1673(b)(2) is not unreason-

able. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 46-207.01. Implementation of withholding.

(a) The IV-D agency shall implement withholding for support orders enforceable by withholding pursuant to § 46-207 by issuing an order to withhold in the format prescribed by federal law and serving this order on the holder of the obligor's earnings or other income as follows:

(1) For support orders that are immediately enforceable by withholding pursuant to § 46-207(a), within 2 business days after the date the support order is received if the holder's address is known, or, if the holder's address is unknown, within 2 business days after receiving or locating the holder's address.

(2) For support orders that become enforceable by withholding pursuant

to § 46-207(d), within 2 business days after the date the support order becomes enforceable by withholding if the holder's address is known, or, if the holder's address is unknown, within 2 business days after receiving or locating the holder's address.

(3) For support orders enforceable by withholding pursuant to § 46-207(f), within 2 business days of receipt of a written request from the Court or a party that includes a copy of the support order and the order authorizing the withholding; provided, that the holder's address is known, or if the holder's address is unknown, within 2 business days after receiving the holder's address.

(b) If an obligor changes employment while a withholding is in effect, the IV-D agency shall serve an order to withhold on the new holder within 2 business days after receiving or locating the new holder's address.

(c) For the purpose of this section, the IV-D agency shall be deemed to have received the holder's address on the date the IV-D agency's computerized support enforcement system receives notice of income or an income source from a court, a state, a holder, the Federal Parent Locator Service, or another source recognized by the IV-D agency, or the date information regarding a newly hired employee is entered into the District of Columbia Directory of New Hires pursuant to § 46-226.06. The Court shall provide the IV-D agency with information it receives concerning the name or address of a holder within 2 business days after receiving the information.

(d) The IV-D agency shall use the automated system it maintains pursuant to § 46-226.10 to the maximum extent that is feasible to assist and facilitate the collection and disbursement of support payments and the implementation of withholding, including:

- (1) Transmission of orders to withhold to employers and other holders;
- (2) Ongoing monitoring to promptly identify failures to make timely payment of support; and
- (3) Automatic use of enforcement procedures if payments are not timely made.

(e) Any person or entity may serve a notice to withhold in the format prescribed by federal law on a holder of an obligor's earnings or other income to inform the holder that the obligor's support order is enforceable by withholding and to require the holder to implement withholding in accordance with this subchapter. A person or entity serving a notice to withhold shall provide a copy of the support order and the order authorizing the withholding to the holder with the notice.

(f) Notices and orders to withhold may be served without prior notice to the obligor, by in-person delivery, certified mail, first-class mail, facsimile, or electronically, if the holder can receive electronic notices.

(Feb. 24, 1987, D.C. Law 6-166, § 8a, as added May 12, 2006, D.C. Law 16-100, § 3(g), 53 DCR 1886; Mar. 25, 2009, D.C. Law 17-353, § 111(b)(1), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section name line.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned

Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

§ 46-208. Withholding.

(a) Notwithstanding any other provision of subchapter II or III of Chapter 5 of Title 16, where a notice or order to withhold is served on a holder of an obligor’s earnings or other income, the withholding shall be for an amount sufficient to satisfy the obligor’s periodic support obligation, an amount equal to 25% of the periodic support obligation if the obligor owes overdue support, and other costs or fees required by the support order.

(b) When an obligor is no longer subject to a periodic support obligation but owes overdue support, the withholding shall be for the amount of the obligor’s most recent periodic support obligation.

(c) Upon a motion by a party or the IV-D agency, the Court may order withholding of an amount that differs from the amount required for overdue support pursuant to subsection (a) or (b) of this section if the Court finds that the amount required would:

(1) Cause a substantial hardship to the obligor; or

(2) Result in an unreasonable delay in the full payment of the overdue support.

(d) A notice or order to withhold served on a holder in accordance with this subchapter shall have priority over any other legal process under District law, and shall not exceed the limitations set forth under section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

(e) The Collection and Disbursement Unit shall establish procedures for the prompt return to an obligor of any amounts it receives that have been improperly withheld.

(f) Nothing in this subchapter shall be construed to require a judicial or administrative hearing before the implementation of withholding.

(g) An order to withhold issued in accordance with this subchapter shall be binding on each present and future holder upon whom it is served until the holder is notified of its termination in writing by the Court or the IV-D agency. Upon a motion filed by a party or the IV-D agency, the Court may enforce an order to withhold issued by the IV-D agency in the same manner as the Court may enforce a judicial order, including civil contempt.

(h) Where a party or entity registers a support order entered in another jurisdiction for enforcement pursuant to Chapter 3 of this title, withholding shall be implemented in the same manner and subject to the same procedures as a support order entered in the District of Columbia.

(Feb. 24, 1987, D.C. Law 6-166, § 9, 33 DCR 6710; Aug. 17, 1991, D.C. Law 9-39, § 4(b), 38 DCR 4970; Apr. 3, 2001, D.C. Law 13-269, § 108(h), 48 DCR

1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(f), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(h), 53 DCR 1886; Mar. 25, 2009, D.C. Law 17-353, § 111(b)(2), 56 DCR 1117.)

Section references. — This section is referred to in §§ 46-201, 46-209, 46-210, 46-211, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-508.

Effect of amendments. — D.C. Law 13-269, in subsec. (c), rewrote the introductory paragraph which had read: "Notwithstanding §§ 46-209(a) and 46-210(e)(2), cases not subject to immediate withholding shall become subject to immediate withholding upon request, regardless of whether there is an arrearage, on the earliest of:", deleted "; or" at the end of par. (2), added "; or" at the end of par. (3), and added a new par. (4); and added new subsecs. (d) and (e).

D.C. Law 15-205 rewrote subsec. (b); and, in subsecs. (c) and (e), substituted "Court" for "Collection and Disbursement Unit". Prior to amendment, subsec. (b) had read as follows: "(b) The Mayor shall establish a procedure for the prompt return to an obligor of any overpayment pursuant to § 46-227."

D.C. Law 16-100 rewrote section, which had read:

"(a) Notwithstanding any other provision of subchapter II or III of Chapter 5 of Title 16, where a withholding is levied upon earnings or other income, the withholding shall:

"(1) Not exceed the limitations set forth under 15 U.S.C. § 1673(b);

"(2) Be binding upon each present and future holder upon whom a copy of the notice of withholding is served until the holder is notified of its termination; and

"(3) Have priority over any legal process under District law.

"(b) The Collection and Disbursement Unit shall establish procedures for the prompt return to an obligor of any amounts that have been improperly withheld.

"(c) The Court shall initiate withholding in cases not subject to immediate withholding pursuant to § 46-207(a-1) on the earliest of:

"(1) The date an absent parent requests the withholding;

"(2) The date a custodial parent requests the withholding and the IV-D agency approves the request;

"(3) Any earlier date the IV-D agency may select; or

"(4) The date on which arrearages equal one month of support payments.

"(d) Nothing in this subchapter shall be construed to require a judicial or administrative hearing before initiation of withholding.

"(e) At the request of a party or entity initiating a registration for enforcement of a sup-

port order entered in another jurisdiction pursuant to Chapter 3 of this title, the Court shall implement withholding in the same manner and subject to the same procedures as an order issued by a tribunal of the District of Columbia."

D.C. Law 17-353 validated a previously made technical correction in the capitalization of "subchapter" in subsec. (a).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(i) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 9. Withholding.

"(a) Notwithstanding any other provision of Subchapter II or III of Chapter 5 of Title 16, where a notice or order to withhold is served on a holder of an obligor's earnings or other income, the withholding shall be for an amount sufficient to satisfy the obligor's periodic support obligation, an amount equal to 25% of the periodic support obligation if the obligor owes overdue support, and other costs or fees required by the support order.

"(b) When an obligor is no longer subject to a periodic support obligation but owes overdue support, the withholding shall be for the amount of the obligor's most recent periodic support obligation.

"(c) Upon a motion by a party or the IV-D agency, the Court may order withholding of an amount that differs from the amount required for overdue support pursuant to subsection (a) or (b) of this section if the Court finds that the amount required would:

"(1) Cause a substantial hardship to the obligor; or

"(2) Result in an unreasonable delay in the full payment of the overdue support.

"(d) A notice or order to withhold served on a holder in accordance with this act shall have priority over any other legal process under District law, and shall not exceed the limita-

tions set forth under section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

“(e) The Collection and Disbursement Unit shall establish procedures for the prompt return to an obligor of any amounts it receives that have been improperly withheld.

“(f) Nothing in this act shall be construed to require a judicial or administrative hearing before the implementation of withholding.

“(g) An order to withhold issued in accordance with this act shall be binding on each present and future holder upon whom it is served until the holder is notified of its termination in writing by the Court or the IV-D agency. Upon a motion filed by a party or the IV-D agency, the Court may enforce an order to withhold issued by the IV-D agency in the same manner as the Court may enforce a judicial order, including civil contempt.

“(h) Where a party or entity registers a support order entered in another jurisdiction for enforcement pursuant to the Uniform Interstate Family Support Act of 1995, effective February 9, 1996 (D.C. Law 11-81; D.C. Official Code § 46-301.01 et seq.), withholding shall be implemented in the same manner and subject to the same procedures as a support order entered in the District of Columbia.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(f) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 45 DCR 309), § 7(h) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(h) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(h) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(h) of the Child Support and Welfare Reform Compliance Emergency

Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(h) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(h) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(h) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(f) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(f) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(i) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(i) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 9-5. — For legislative history of D.C. Law 9-5, see Historical and Statutory Notes following § 46-226.01.

Legislative history of Law 9-39. — For legislative history of D.C. Law 9-39, see Historical and Statutory Notes following § 46-226.01.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 46-207.01.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

CASE NOTES

Withholding limits.

The 55 per centum limitation established under 15 U.S.C. § 1673(b)(2) is not unreason-

able. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 46-209. Notice of withholding to the obligor.

(a) If a support order becomes enforceable by withholding pursuant to § 46-207(d), the IV-D agency shall send a notice of withholding to the obligor and shall certify the date the notice is mailed.

(b) The notice of withholding to the obligor shall include the following:

(1) Notice that withholding has commenced;

(2) A statement of any arrearage that has accrued, the amount of the support obligation that is accruing, and the periodic amount required to be paid in the future;

(3) A statement of the amount of the obligor's earnings or other income that shall be withheld;

(4) A statement that the withholding shall apply to any current and subsequent employer or period of employment;

(5) A statement that the obligor has the right to object to the withholding, a statement of the procedures available for objecting to the withholding, and a statement that the only basis for objecting to the withholding is a mistake of fact as defined in § 46-210(c);

(6) A statement of the actions that will be taken if the obligor objects to the withholding; and

(7) A statement of the information given to the holder pursuant to § 46-211.

(c) The IV-D agency shall send the notice of withholding to the obligor within 15 days after serving the order to withhold on the holder.

(Feb. 24, 1987, D.C. Law 6-166, § 10, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(c), 37 DCR 3720; Apr. 9, 1997, D.C. Law 11-170, § 2(c), 43 DCR 4480; Apr. 3, 2001, D.C. Law 13-269, § 108(i), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(g), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(i), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-210, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-509.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“§ 46-209. Notice of intent to withhold.

“(a) For any order listed in § 46-207(c)(1), (2), (3), (4), or (7) where there are arrearages equal to 30 days of support payments, any caretaker, custodian, responsible relative, or the Mayor may apply to the Clerk of the Court to issue a notice of intent to withhold and the Clerk of the Court shall issue to the obligor, by certified mail, a notice of intent to withhold and shall certify the date the notice is mailed. The Mayor

shall apply to the Clerk of the Court to issue a notice of intent to withhold in all child support cases in which a child support order was issued effective before October 1, 1990, and being enforced under 42 U.S.C. § 651 et seq., where there are arrearages equal to 30 days of support payments.

“(b) For any order listed in § 46-207(c)(5) or (6), any caretaker, custodian, responsible relative, or agency may apply to the Clerk of the Court to issue a notice of intent to withhold upon compliance with the requirements of § 46-222. The Clerk of the Court shall issue to the obligor by certified mail a notice of intent to withhold and shall certify the date the notice is mailed.

"(c) The notice of intent to withhold as required in subsections (a) and (b) of this section shall include the following:

"(1) A statement of any arrearage that has accrued, the support obligation that is accruing, and the periodic amount required to be paid in the future;

"(2) A statement that the obligor's earnings or other income shall be withheld in the amount specified in the notice;

"(3) A statement that the withholding shall apply to any current and subsequent periods of employment;

"(4) A statement that, unless the obligor files an objection to contest the withholding within 15 days of the date the notice was mailed to the obligor, the Clerk of the Court will notify the holder to commence the withholding;

"(5) A statement that the obligor has the right to contest the withholding, a statement of the procedures available for contesting the withholding, and a statement that the only basis for contesting is a mistake of fact as defined in § 46-210(c);

"(6) A statement of the actions that will be taken if the obligor contests the withholding;

"(7) A statement that, within 10 days after termination or change of employment or change of the obligor's home address, the obligor shall notify the Court and provide the following information:

"(A) The obligor's social security number;

"(B) The obligor's home address and telephone number; and

"(C) The name, address, and telephone number of the obligor's employer; and

"(8) The time period within which the withholding shall begin and the information given to the holder pursuant to § 46-211.

"(d)(1) In the case of wages not subject to immediate withholding, including cases subject to a finding of good cause or a written agreement, the court shall issue advance notice of initiated withholding to the absent parent on the earliest of the following dates:

"(A) If the absent parent's address is known:

"(i) Within 15 days of the date on which the arrearages equal support payable for 1 month:

"(ii) The date on which the absent parent requests payment to begin, if the date is approved by the court; or

"(iii) A date established by the court pursuant to child support procedures; or

"(B) If the parent's address is not known, within 15 calendar days of locating the parent.

"(2) The advance notice shall include the information set forth in subsection (c) of this section."

D.C. Law 15-205, in subsec. (a), substituted "Court" for "Collection and Disbursement Unit"; and, in par. (7) of subsec. (c), substituted "IV-D agency and the Court" for "Collection and Disbursement Unit".

D.C. Law 16-100 rewrote the section, which had read:

"(a) For any support order subject to initiated withholding pursuant to § 46-208(c), the Court shall issue to the obligor, by certified mail, a notice of withholding and shall certify the date the notice is mailed.

"(b) Repealed.

"(c) The notice of withholding shall include the following:

"(1) Notice that withholding has commenced;

"(2) A statement of any arrearage that has accrued, the support obligation that is accruing, and the periodic amount required to be paid in the future;

"(3) A statement that the obligor's earnings or other income shall be withheld in the amount specified in the notice;

"(4) A statement that the withholding shall apply to any current and subsequent periods of employment;

"(5) A statement that the obligor has the right to contest the withholding, a statement of the procedures available for contesting the withholding, and a statement that the only basis for contesting the withholding is a mistake of fact as defined in § 46-210(c);

"(6) A statement of the actions that will be taken if the obligor contests the withholding;

"(7) A statement that, within 10 days of termination or change of the obligor's employment, or change of the obligor's home address, the obligor shall notify the IV-D agency and the Court of the termination or change and provide the following information:

"(A) The obligor's social security number;

"(B) The obligor's residential and mailing address and telephone number;

"(C) The name, address, and telephone number of all of the obligor's employers, including all names under which each employer does business, and, if the obligor is self-employed, the obligor's business address and all names under which the obligor does business;

"(D) The obligor's driver's license number; and

"(8) A statement of the information given to the holder pursuant to 46-211.

"(d)(1) In the case of wages subject to initiated withholding, including cases subject to a finding of good cause or a written agreement, the court shall issue a notice of withholding to the absent parent on the earliest of the following dates:

"(A) If the absent parent's address is known:

"(i) Within 15 days of the date on which the arrearages equal support payable for 1 month;

"(ii) The date on which the obligor requests payment to begin;

"(iii) A date established by the court pursuant to child support procedures; or

"(iv) The date on which the obligee requests withholding or, for orders being enforced pur-

suant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), the date the IV-D agency approves the request; or

“(B) If the parent’s address is not known, within 15 calendar days of locating the parent.

“(2) The notice shall include the information set forth in subsection (c) of this section.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Child Support Enforcement Temporary Amendment Act of 1995 (D.C. Law 11-47, September 20, 1995, law notification 42 DCR 5506).

For temporary (225 day) amendment of section, see § 2(c) of Child Support Enforcement Temporary Amendment Act of 1996 (D.C. Law 11-148, May 20, 1996, law notification 43 DCR 4353).

For temporary (225 day) amendment of section, see § 7(g) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 7(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(i) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(j) of D.C. Law 16-42 rewrote section to read as follows:

“Sec. 10. Notice of withholding to the obligor.

“(a) If a support order becomes enforceable by withholding pursuant to section 8(d), the IV-D agency shall send a notice of withholding to the obligor and shall certify the date the notice is mailed.

“(b) The notice of withholding to the obligor shall include the following:

“(1) Notice that withholding has commenced;

“(2) A statement of any arrearage that has accrued, the amount of the support obligation that is accruing, and the periodic amount required to be paid in the future;

“(3) A statement of the amount of the obligor’s earnings or other income that shall be withheld;

“(4) A statement that the withholding shall apply to any current and subsequent employer or period of employment;

“(5) A statement that the obligor has the right to object to the withholding, a statement of the procedures available for objecting to the with-

holding, and a statement that the only basis for objecting to the withholding is a mistake of fact as defined in section 11(c);

“(6) A statement of the actions that will be taken if the obligor objects to the withholding; and

“(7) A statement of the information given to the holder pursuant to section 12.

“(c) The IV-D agency shall send the notice of withholding to the obligor within 15 days after serving the order to withhold on the holder.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(c) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(c) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary amendment of section, see § 7(g) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(i) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(i) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(i) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(i) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(i) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(i) of the Child Support and

Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(i) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(g) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(g) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) addition of section, see § 3(j) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(j) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 8-150. — For legislative history of D.C. Law 8-150, see Historical and Statutory Notes following § 46-224.01.

Legislative history of Law 11-170. — For legislative history of D.C. Law 11-170, see Historical and Statutory Notes following § 46-205.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

CASE NOTES

In general.

Any procedural irregularities in sending of notice of intent to withhold wages, in proceeding to enforce child support obligation, was harmless where obligor spouse had ample hearing at which he was represented by counsel and was able to assert all defenses available. D.C. Code 1981, §§ 30-509(a), 30-510(c, e). *McNeil v. Reynolds*, 575 A.2d 270, 1990 D.C. App. LEXIS 135 (1990).

Wage withholding proceeding to enforce child support obligation imposed by local court could properly be instituted by court clerk upon written request of Department of Human Services; moreover, sworn statement of arrearages from mother was not required for notification of intent to withhold wages to be effective in such an action. D.C. Code 1981, § 30-509(a, b). *McNeil v. Reynolds*, 575 A.2d 270, 1990 D.C. App. LEXIS 135 (1990).

§ 46-210. Objections to withholding.

(a) An obligor may object to a withholding commenced pursuant to § 46-207.01 by filing a motion to quash the withholding with the Court within 15 days after the earlier of the date the notice of withholding was mailed or the date the first payment was withheld.

(b) The Court shall resolve any motion to quash the withholding within 90 days after service of the motion on the opposing party, unless, upon a showing of good cause, the Court finds that additional time is needed to resolve the motion.

(c) The only ground for an objection to a withholding is a mistake of fact, which is defined as:

- (1) A mistake in the amount of arrears;
- (2) A mistake in the identity of the obligor; or

(3) A mistake in the amount of the withholding that causes the amount withheld to exceed the limits specified in § 46-208 or section 303(b) of the

Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

(d) Payment of arrearages after the date of issuance of a notice of withholding to the obligor pursuant to § 46-209 is not a defense to the withholding.

(e) The Court shall deny the motion in all cases except where the identity of the obligor is mistaken or, if applicable, where arrearages have never equaled one month of support payments, and shall notify the obligor.

(f) If the Court determines that the amount to be withheld exceeds the limits of § 46-208 or section 303(b) of the Consumer Credit Protection Act [15 U.S.C. § 1673(b)], the Court shall serve or direct the IV-D agency to serve an order to withhold on the holder that complies with those limits.

(g) The Court shall deny any request to stay the withholding pending resolution of an objection or appeal.

(Feb. 24, 1987, D.C. Law 6-166, § 11, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(j), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(h), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(j), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-209, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-510.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“(a) The Clerk shall issue the notice of withholding pursuant to § 46-211 unless the obligor files an objection to contest the withholding pursuant to this section within 15 days after the notice of intent to withhold is mailed.

“(b) The notice to the holder pursuant to § 46-211 shall be sent within 45 days of the date that the notice of intent to withhold was sent to the obligor pursuant to subsection (a) and this subsection. Any objections raised by the obligor shall be resolved within 45 days from the date that the notice of intent to withhold was sent.

“(c) The only grounds for objection by an obligor are mistakes of fact which are defined as:

“(1) The amount of arrears;

“(2) The identity of the obligor; and

“(3) Whether the amount to be withheld as a periodic payment exceeds the limits of 15 U.S.C. § 1673(b).

“(d) Payment of arrearages after the date of the application to the Clerk of the Court for the issuance of a notice of intent to withhold pursuant to subsection (b) of this section is not a defense to the withholding.

“(e)(1) Objections filed to contest the withholding shall be filed with the Court.

“(2) The Court shall order withholding in all cases except where the identity of the obligor is mistaken or where arrearages have never equaled 30 days of support payments, and shall notify the obligor.

“(3) The notice of withholding shall include the time period within which the withholding shall begin, and shall contain the information given to the holder pursuant to § 46-211.

“(4) The Court shall not grant any request to stay implementation of withholding pending further objections or appeal.

“(5) If the Court determines that the amount to be withheld as a periodic payment exceeds the limits of 15 U.S.C. § 1673(b), then the Court shall issue a notice of withholding to the holder that complies with those limits.

“(f) Notice to an obligor sent pursuant to § 46-222 shall comply with this section and provisions in § 46-222(a)(3).”

D.C. Law 15-205 rewrote subsec. (d); and, in par. (5) of subsec. (e), deleted “direct the Collection and Disbursement Unit to” following “The court shall”. Prior to amendment, subsec. (d) had read as follows: “(d) Payment of arrearages after the date of the application to the Collection and Disbursement Unit for the issuance of a notice of withholding pursuant to subsection (b) of this section is not a defense to the withholding.”

D.C. Law 16-100 rewrote the section, which had read:

“(a) For support orders subject to immediate or initiated withholding pursuant to § 46-207(a-1) or § 46-208(c), the obligor may contest the withholding by filing with the Court a motion to quash the withholding within 15 days of the date the notice of withholding is mailed. Upon the filing of a motion to quash the withholding, the Collection and Disbursement Unit shall hold in escrow all monies collected pursuant to the withholding until the motion is resolved or the Court orders the release of the escrow.

"(b) The Court shall resolve any motion to quash the withholding within 90 days of the date the notice of withholding was mailed, unless, upon a showing of good cause, the Court finds that additional time is needed to resolve the motion. If the Court finds that additional time is needed to resolve the motion, the Court may release to the obligee any funds held in escrow pursuant to the withholding and order the release of all further payments to the obligee pending further proceedings.

"(c) The only grounds for objection by an obligor are mistakes of fact which are defined as:

- "(1) The amount of arrears;
- "(2) The identity of the obligor; and

"(3) Whether the amount to be withheld as a periodic payment exceeds the limits of 15 U.S.C. § 1673(b).

"(d) Payment of arrearages after the date of the issuance of a notice of withholding pursuant to § 46-209 is not a defense to the withholding.

"(e)(1) Motions filed to contest the withholding shall be filed with the Court.

"(2) The Court shall deny the motion in all cases except where the identity of the obligor is mistaken or where arrearages have never equaled one month of support payments, and shall notify the obligor.

"(3) Repealed.

"(4) The Court shall not grant any request to stay implementation of withholding or hold funds in escrow pending further objections or appeal.

"(5) If the Court determines that the amount to be withheld as a periodic payment exceeds the limits of 15 U.S.C. § 1673(b), the Court shall issue a notice to withhold to the holder that complies with those limits.

"(f) Repealed."

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 7(j) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(j) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(j) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(k) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 11. Objections to withholding.

"(a) An obligor may object to a withholding commenced pursuant to section 8a by filing a motion to quash the withholding with the Court

within 15 days after the earlier of the date the notice of withholding was mailed or the date the first payment was withheld.

"(b) The Court shall resolve any motion to quash the withholding within 90 days after service of the motion on the opposing party, unless, upon a showing of good cause, the Court finds that additional time is needed to resolve the motion.

"(c) The only ground for an objection to a withholding is a mistake of fact, which is defined as:

"(1) A mistake in the amount of arrears;

"(2) A mistake in the identity of the obligor; or

"(3) A mistake in the amount of the withholding that causes the amount withheld to exceed the limits specified in section 9 or section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

"(d) Payment of arrearages after the date of issuance of a notice of withholding to the obligor pursuant to section 10 is not a defense to the withholding.

"(e) The Court shall deny the motion in all cases except where the identity of the obligor is mistaken or, if applicable, where arrearages have never equaled one month of support payments, and shall notify the obligor.

"(f) If the Court determines that the amount to be withheld exceeds the limits of section 9 or section 303(b) of the Consumer Credit Protection Act, the Court shall serve or direct the IV-D agency to serve an order to withhold on the holder that complies with those limits.

"(g) The Court shall deny any request to stay the withholding pending resolution of an objection or appeal."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(j) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 23, 1998, 45 DCR 1923), § 7(j) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(j) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(j) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(j) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(j) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(j) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(h) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(h) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(k) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(k) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

CASE NOTES

In general.

Any procedural irregularities in sending of notice of intent to withhold wages, in proceeding to enforce child support obligation, was harmless where obligor spouse had ample hearing at which he was represented by counsel and was able to assert all defenses available. D.C. Code 1981, §§ 30-509(a), 30-510(c, e). *McNeil v. Reynolds*, 575 A.2d 270, 1990 D.C. App. LEXIS 135 (1990).

Defendant in a child support arrearages action is not entitled to credit or reimbursement for expenditures made to or on behalf of the

children in lieu of direct child support payments to the plaintiff. *Savage v. Savage*, 117 WLR 221 (Super. Ct. 1989).

Where father was to have had custody of the parties' daughter for the months of July and August, and during these 2 months did not have to pay any child support, regardless of whether or not the parties chose to obey the court's order as to custody, the respondent was only obligated to pay child support for 10 months out of each year. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

§ 46-211. Notice to withhold to the holder.

A notice or order to withhold served pursuant to § 46-207.01 shall be issued in the format required by federal law and shall state the following:

(1) The amount to be withheld, including any fee deducted and retained under § 46-212;

(2) That the amount to be withheld shall not exceed the limits imposed under section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b));

(3) That the holder shall withhold from the obligor's earnings or other income the amount specified in the notice or order to withhold, pay the withheld amount to the Collection and Disbursement Unit within 7 business days after the date the income would have been paid to the obligor, and report to the Collection and Disbursement Unit the date on which the amount was withheld;

(4) That the holder shall begin withholding no later than the first pay

period occurring 10 days after the date the notice or order to withhold was issued;

(5) That the holder may deduct and retain an additional \$ 2 for processing costs or, if applicable, an amount permitted under § 46-212(e);

(6) That the withholding is binding on the holder until further notice;

(7) That the holder may be fined in accordance with § 46-219(c) for discharging an obligor from employment, refusing to employ an obligor, or taking disciplinary action against an obligor because of the withholding;

(8) That, if the holder fails to withhold support payments from earnings or other income or remit these payments to the Collection and Disbursement Unit as required under this subchapter, the holder shall be liable as specified in § 46-213;

(9) That the withholding has priority over any other legal process under District law;

(10) That the holder may combine withheld amounts from more than one obligor in a single payment and separately identify the portion of the payment that is attributable to each obligor;

(11) That the holder shall withhold according to the requirements of § 46-212; and

(12) That the holder shall give notice to the IV-D agency of a termination of the obligor's employment as required by § 46-216.

(Feb. 24, 1987, D.C. Law 6-166, § 12, 33 DCR 6710; Apr. 9, 1997, D.C. Law 11-170, § 2(d), 43 DCR 4480; Apr. 3, 2001, D.C. Law 13-269, § 108(k), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(i), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(k), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-209, 46-212, 46-216, 46-218, 46-219, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-511.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“§ 46-211. Notice of withholding to the holder.

“(a) After issuance of the notice of intent to withhold, and the determination, against the obligor, of any objections raised by the obligor under § 46-210, but within 45 days from the date the notice of intent to withhold was issued to the obligor, the Clerk of the Court shall issue a notice to the holder.

“(a-1) In the case of immediate wage withholding, the Clerk of the Court shall issue a notice to withhold within 15 days of the date the support order is issued if the employer's address is known, or if the employer's address is unknown, within 15 days of locating the employer's address.

“(b) The notice issued under subsections (a) and (a-1) of this section shall explain the following:

“(1) The amount to be withheld for support and other purposes and that the amount to be

withheld may not exceed the limits imposed under 15 U.S.C. § 1673(b);

“(2) That, if the holder is the obligor's employer, the holder must send the withheld amount to the Court at the same time the obligor is paid;

“(3) That the holder may deduct and retain an additional \$2 for processing costs;

“(4) That the withholding is binding on the holder until further notice by the Court;

“(5) That the holder or employer may be fined in accordance with § 46-219(c) for discharging an obligor from employment, refusing to employ an obligor, or taking disciplinary action against any obligor because of the withholding;

“(6) That, if the holder fails to withhold earnings or other income as required under this chapter, the holder will be liable as specified in § 46-213;

“(7) That the withholding has priority as specified in § 46-208(a)(3);

“(8) That the holder may combine withheld amounts from more than 1 obligor in a single payment and separately identify the portion of the payment that is attributable to each obligor;

“(9) That the holder must withhold according to the requirements of § 46-212; and

"(10) That the holder shall give notice to the Court of termination of employment of the obligor as required by § 46-216."

D.C. Law 15-205, in subsecs. (a), (a-1), (a-2), and pars. (4) and (10) of subsec. (b), substituted "Court" for "Collection and Disbursement Unit".

D.C. Law 16-100 rewrote the section, which had read:

"(a) For support orders subject to immediate or initiated withholding, the Court shall issue a notice to withhold to the holder, which may be issued electronically if the holder can receive electronic notices, without providing prior notice to the obligor.

"(a-1) In the case of immediate withholding pursuant to § 46-207(a-1), the Court shall issue a notice to withhold to the holder within 2 business days of the date the support order is received, if the holder's address is known, or, if the holder's address is unknown, within 2 business days of locating the holder's address.

"(a-2) In the case of initiated withholding pursuant to § 46-208(c), the Court shall issue a notice to withhold to the holder within 2 business days of the date specified in § 46-208(c), if the holder's address is known, or if the holder's address is unknown within 2 business days of locating the holder's address.

"(b) The notice issued under subsections (a), (a-1), and (a-2) of this section shall explain the following:

"(1) The amount to be withheld for support and other purposes and that the amount to be withheld may not exceed the limits imposed under 15 U.S.C. § 1673(b);

"(2) That, if the holder is the obligor's employer, the holder must send the withheld amount to the Collection and Disbursement Unit at the same time the obligor is paid, except as provided in § 46-412(a) and (e);

"(3) That the holder may deduct and retain an additional \$2 for processing costs, or, if applicable, an amount permitted under § 46-412(e);

"(4) That the withholding is binding on the holder until further notice by the Court;

"(5) That the holder or employer may be fined in accordance with § 46-219(c) for discharging an obligor from employment, refusing to employ an obligor, or taking disciplinary action against any obligor because of the withholding;

"(6) That, if the holder fails to withhold earnings or other income as required under this subchapter, the holder will be liable as specified in § 46-213;

"(7) That the withholding has priority as specified in § 46-208(a)(3);

"(8) That the holder may combine withheld amounts from more than 1 obligor in a single payment and separately identify the portion of the payment that is attributable to each obligor;

"(9) That the holder must withhold according to the requirements of § 46-212; and

"(10) That the holder shall give notice to the Court of termination of employment of the obligor as required by § 46-216."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Child Support Enforcement Temporary Amendment Act of 1995 (D.C. Law 11-47, September 20, 1995, law notification 42 DCR 5506).

For temporary (225 day) amendment of section, see § 2(d) of Child Support Enforcement Temporary Amendment Act of 1996 (D.C. Law 11-148, May 20, 1996, law notification 43 DCR 4353).

For temporary (225 day) amendment of section, see § 7(h) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 7(k) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(k) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(k) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(l) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 12. Notice to withhold to the holder.

"A notice or order to withhold served pursuant to section 8a shall be issued in the format required by federal law and shall state the following:

"(1) The amount to be withheld, including any fee deducted and retained under section 13;

"(2) That the amount to be withheld shall not exceed the limits imposed under section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b));

"(3) That the holder shall withhold from the obligor's earnings or other income the amount specified in the notice or order to withhold, pay the withheld amount to the Collection and Disbursement Unit within 7 business days after the date the income would have been paid to the obligor, and report to the Collection and Disbursement Unit the date on which the amount was withheld;

"(4) That the holder shall begin withholding no later than the first pay period occurring 10 days after the date the notice or order to withhold was issued;

"(5) That the holder may deduct and retain an additional \$ 2 for processing costs or, if applicable, an amount permitted under section 13(e);

"(6) That the withholding is binding on the holder until further notice;

"(7) That the holder may be fined in accordance with section 20(c) for discharging an obligor from employment, refusing to employ an obligor, or taking disciplinary action against an obligor because of the withholding;

"(8) That, if the holder fails to withhold support payments from earnings or other income or remit these payments to the Collection and Disbursement Unit as required under this act, the holder shall be liable as specified in section 14;

"(9) That the withholding has priority over any other legal process under District law;

"(10) That the holder may combine withheld amounts from more than one obligor in a single payment and separately identify the portion of the payment that is attributable to each obligor;

"(11) That the holder shall withhold according to the requirements of section 13; and

"(12) That the holder shall give notice to the IV-D agency of a termination of the obligor's employment as required by section 17."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(d) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(d) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary amendment of section, see § 7(h) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(k) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(k) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(k) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(k) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of

1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(k) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(k) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(k) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(i) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(i) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(l) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(l) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 11-170. — For legislative history of D.C. Law 11-170, see Historical and Statutory Notes following § 46-205.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-212. Holder's duty to withhold and make payments.

(a) Except as provided in subsection (e) of this section, a holder that receives a notice or order to withhold issued in accordance with this subchapter shall withhold the specified amount and make payment to the Collection and Disbursement Unit no later than 7 business days after the date the amount would have been paid or credited to the obligor. The holder shall begin withholding no later than the first pay period occurring 10 days after the date the notice or order to withhold was issued.

(b) If a holder receives notice of any legal proceeding challenging the withholding or the judgment or order of support on which it is based, the holder shall continue to withhold and submit the payments to the Collection and Disbursement Unit until the holder receives written notice from the Court or the IV-D agency directing the holder to cease the withholding.

(c) Any payment made by a holder in conformity with this section shall discharge the liability of the holder to the obligor to the extent of the payment.

(d) A holder upon whom a notice or order to withhold has been served may deduct and retain from the obligor's earnings or other income an additional \$2 for each deduction made in accordance with the notice or order to withhold. Where the total amount to be withheld, together with a fee, exceeds the limitations set forth in section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)), the holder shall reduce the amount of the withholding to conform with these limitations, but the amount of the fee shall not be reduced by reason of the limitations.

(e) Notwithstanding any other provision of this subchapter, if a holder receives a notice or order to withhold issued by another state, the holder shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The holder's fee for processing the notice or order to withhold;
- (2) The maximum amount permitted to be withheld from the obligor's income;
- (3) The time periods within which the holder must implement the withholding and forward the support payment;
- (4) The priorities for withholding and allocating income withheld for multiple support obligees; and
- (5) Any withholding terms or conditions not specified in the notice or order to withhold.

(Feb. 24, 1987, D.C. Law 6-166, § 13, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(l), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(j), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(l), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-211, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-512.

Effect of amendments. — D.C. Law 13-269 rewrote subsec. (a); substituted "Collection and Disbursement Unit" for "Court" in subsec. (b);

and added subsec. (e). Prior to amendment, subsec. (a) had read:

"(a) A holder required to withhold earnings or other income shall withhold and make payment no later than the first pay period that occurs after 14 days following the date the notice was mailed or no later than the date the applicable

income becomes due or otherwise available to the obligor. Thereafter, the holder shall send the required withholding to the Court on the same date the obligor is compensated."

D.C. Law 15-205, in subsec. (b), substituted "Court" for "Collection and Disbursement Unit".

D.C. Law 16-100 rewrote the section, which had read:

"(a) Except as provided in subsection (e) of this section, a holder required to withhold income shall withhold and make payment to the Collection and Disbursement Unit no later than 7 business days after the date the amount would have been paid or credited to the obligor. Thereafter, the holder shall send the required withholding to the Collection and Disbursement Unit on the same date that the obligor is compensated.

"(b) When the holder has received written notice of any legal proceedings challenging the withholding or the judgment or order of support on which it is based, the holder shall continue to withhold the payments from the obligor until receipt of a notice from the Court informing the holder to cease the withholding.

"(c) Any payment made by a holder in conformity with this section shall discharge the liability of the holder to the obligor to the extent of the payment.

"(d) The holder, upon whom a notice of withholding as provided by § 46-211 is served, may deduct and retain from the person's earnings or other income an additional \$2 for each deduction made in accordance with the notice. Where the total amount to be withheld, together with a fee, exceeds the limitations set forth in 15 U.S.C. § 1673(b), the amount of withholding shall be reduced by the holder to conform with the limitations, but the amount of the fee shall not be reduced by reason of the limitations.

"(e) Notwithstanding any other provision of this subchapter, if an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

"(1) The employer's fee for processing an income withholding order;

"(2) The maximum amount permitted to be withheld from the obligor's income;

"(3) The time periods within which the employer must implement the income withholding order and forward the support payment;

"(4) The priorities for withholding and allocating income withheld for multiple support obligees; and

"(5) Any withholding terms or conditions not specified in the order."

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 7(l) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998

(D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(l) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(l) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(m) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 13. Holder's duty to withhold and make payments.

"(a) Except as provided in subsection (e) of this section, a holder that receives a notice or order to withhold issued in accordance with this act shall withhold the specified amount and make payment to the Collection and Disbursement Unit no later than 7 business days after the date the amount would have been paid or credited to the obligor. The holder shall begin withholding no later than the first pay period occurring 10 days after the date the notice or order to withhold was issued.

"(b) If a holder receives notice of any legal proceeding challenging the withholding or the judgment or order of support on which it is based, the holder shall continue to withhold and submit the payments to the Collection and Disbursement Unit until the holder receives written notice from the Court or the IV-D agency directing the holder to cease the withholding.

"(c) Any payment made by a holder in conformity with this section shall discharge the liability of the holder to the obligor to the extent of the payment.

"(d) A holder upon whom a notice or order to withhold has been served may deduct and retain from the obligor's earnings or other income an additional \$ 2 for each deduction made in accordance with the notice or order to withhold. Where the total amount to be withheld, together with a fee, exceeds the limitations set forth in section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)), the holder shall reduce the amount of the withholding to conform with these limitations, but the amount of the fee shall not be reduced by reason of the limitations.

"(e) Notwithstanding any other provision of this act, if a holder receives a notice or order to withhold issued by another state, the holder shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

"(1) The holder's fee for processing the notice or order to withhold;

"(2) The maximum amount permitted to be withheld from the obligor's income;

"(3) The time periods within which the holder must implement the withholding and forward the support payment;

"(4) The priorities for withholding and allocating income withheld for multiple support obligees; and

"(5) Any withholding terms or conditions not specified in the notice or order to withhold."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(i) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(l) of the Child Support and Welfare Reform Compliance Second Emergency Amendment

Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(l) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(l) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(l) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-213. Judgment against holder for failure to comply.

(a) If a holder fails to withhold support from earnings or other income, or fails to pay the support to the Collection and Disbursement Unit in accordance with this subchapter, judgment shall be entered against the holder for any amount not withheld or paid to the Collection and Disbursement Unit and for any reasonable counsel fees and court costs incurred by the obligor, obligee, caretaker, custodian, the Mayor, or their representative as a result of this failure to withhold or make payment.

(b) Subsection (a) of this section shall not apply where the holder proves, by a preponderance of the evidence, that the failure to withhold or make payment was due to exigent circumstances beyond the holder's control.

(Feb. 24, 1987, D.C. Law 6-166, § 14, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(m), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(m), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-211, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-513.

Effect of amendments. — D.C. Law 13-269 rewrote subsec. (a) which had read:

"(a) Except as provided in subsection (b) of this section, if a holder fails to withhold earnings or other income in accordance with this chapter, judgment shall be entered against the holder for any amount not withheld and for any reasonable counsel fees and Court costs incurred by the obligor, caretaker, custodian, or their representative."

D.C. Law 16-100, in subsec. (a), substituted "earnings or other income" for "income or other earnings", substituted "obligor, obligee," for "obligor," and deleted "responsible relative," fol-

lowing "custodian"; and in subsec. (b), substituted "failure to withhold or make payment" for "failure to withhold".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 107(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(n) of D.C. Law 16-42, in subsec. (a), substituted "earnings or other income" for "income or other earnings", substituted "obligor, obligee," for "obligor," and deleted "responsible

relative.”; and in subsec. (b), substituted “failure to withhold or make payment” for “failure to withhold”.

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Emergency

Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(m) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(n) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(n) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-214. Termination of withholding.

(a) Withholding shall terminate:

(1) When the support obligation has been terminated and the total arrearage has been satisfied;

(2) When the holder, by reason of termination of employment or other reason, no longer holds earnings or other income payable to the obligor;

(3) When the payee has failed to give notice to the Court and the IV-D agency of a change of address as required by § 46-226.02, and the holder receives written notice from the Court or the IV-D agency that withholding is no longer required; or

(4) When the holder receives written notice from the Court or the IV-D agency that withholding is no longer required based on information received from another jurisdiction.

(b) The Court shall provide the IV-D agency with a copy of each notice of termination it issues to a holder within 2 business days after issuance.

(c) If, because of the failure of a payee to give notice to the Court and the IV-D agency of a change in address as required by § 46-226.02, the Collection and Disbursement Unit is unable, for a 3-month period, to deliver payments received pursuant to a notice or order to withhold, the IV-D agency shall send written notice to the holder to cease the withholding. The Collection and Disbursement Unit shall prorate and apply the undeliverable payments to satisfy amounts the obligor owes under other support orders, and shall prioritize these payments in accordance with § 46-217. If the obligor does not owe support under an additional support order, the Collection and Disbursement Unit shall apply the payments to any fees or debts owed to the IV-D agency and return the balance of the undeliverable payments, if any, to the obligor.

(Feb. 24, 1987, D.C. Law 6-166, § 15, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(n), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(k), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(n), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-514.

Effect of amendments. — D.C. Law 13-269 substituted "Collection and Disbursement Unit" for "Court" throughout the section.

D.C. Law 15-205, in pars. (3) and (4) of subsec. (a), and in subsections (b) and (c), substituted "Court" for "Collection and Disbursement Unit".

D.C. Law 16-100 rewrote the section, which had read:

"(a) Withholding shall terminate:

"(1) When the support obligation has been terminated and the total arrearage has been satisfied;

"(2) When the holder, by reason of termination of employment or other reason, no longer holds earnings or other income payable to the obligor;

"(3) When the payee has failed to give notice to the Court of a change of address as required by subsections (b) and (c) of this section; or

"(4) When the foreign jurisdiction gives notice to the Court that withholding is no longer required.

"(b) If the address of a payee changes, the payee, within a reasonable time, shall notify the Court.

"(c) If, because of the failure of a payee to give notice under this section, the Court is unable, for a 3-month period, to deliver payments owed pursuant to the withholding order, the Court shall return each undeliverable payment to the obligor and inform the holder to cease the withholding."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(m) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(n) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(n) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(o) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 15. Termination of withholding.

"(a) Withholding shall terminate:

"(1) When the support obligation has been terminated and the total arrearage has been satisfied;

"(2) When the holder, by reason of termination of employment or other reason, no longer holds earnings or other income payable to the obligor;

"(3) When the payee has failed to give notice to the Court and the IV-D agency of a change of address as required by section 27b, and the holder receives written notice from the Court or the IV-D agency that withholding is no longer required; or

"(4) When the holder receives written notice from the Court or the IV-D agency that withholding is no longer required based on information received from another jurisdiction.

"(b) The Court shall provide the IV-D agency with a copy of each notice of termination it issues to a holder within 2 business days after issuance.

"(c) If, because of the failure of a payee to give notice to the Court and the IV-D agency of a change in address as required by section 27b, the Collection and Disbursement Unit is unable, for a 3-month period, to deliver payments received pursuant to a notice or order to withhold, the IV-D agency shall send written notice to the holder to cease the withholding. The Collection and Disbursement Unit shall prorate and apply the undeliverable payments to satisfy amounts the obligor owes under other support orders, and shall prioritize these payments in accordance with section 18. If the obligor does not owe support under an additional support order, the Collection and Disbursement Unit shall apply the payments to any fees or debts owed to the IV-D agency and return the balance of the undeliverable payments, if any, to the obligor."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(m) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(m) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(m) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(m) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(m) of Child Support and Wel-

fare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(r) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(r) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

CASE NOTES

In general.

Superior court had jurisdiction to terminate wage withholding order, where no support ob-

ligation existed, due to child's emancipation, and there were no arrears. *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

§ 46-215. Lapse of order of withholding.

An order to withhold issued by the IV-D agency or other appropriate agency upon a judgment or order for support and issued within 12 years from the date of the judgment or order shall not lapse or become invalid before complete satisfaction solely by reason of the expiration of the period of limitation set forth in § 15-101.

(Feb. 24, 1987, D.C. Law 6-166, § 16, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(o), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(l), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(o), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-515.

Effect of amendments. — D.C. Law 13-269 substituted "Collection and Disbursement Unit" for "Court".

D.C. Law 15-205 substituted "Court" for "Collection and Disbursement Unit".

D.C. Law 16-100 substituted "to withhold issued by the IV-D agency" for "of withholding issued by the Court".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(n) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of sec-

tion, see § 107(o) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(o) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(p) of D.C. Law 16-42 substituted "to withhold issued by the IV-D agency" for "of withholding issued by the Court".

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(n) of the Child Support and Welfare Reform Compliance Sec-

and Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(n) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(n) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(n) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(o) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(o) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(o) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(l) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(l) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(p) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(p) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-216. Termination of employment.

(a) Within 10 days after an employer receives notice that the obligor will terminate employment or within 10 days after the termination, whichever occurs earlier, the employer shall notify the IV-D agency and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

(b) The IV-D agency shall serve an order to withhold on the obligor's new employer within 2 business days after receipt of information regarding the obligor's new place of employment, or within 2 business days after the date information regarding the obligor is entered into the District of Columbia Directory of New Hires pursuant to § 46-226.06, whichever occurs first.

(Feb. 24, 1987, D.C. Law 6-166, § 17, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(p), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(m), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(p), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-211, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-516.

Effect of amendments. — D.C. Law 13-269 substituted "Collection and Disbursement

Unit" for "Court" in subsec. (a); and rewrote subsec. (b) which had read:

"(b) Within 20 days of receipt of information regarding the obligor's new place of employment, the Court shall notify the obligor's new employer, in accordance with the requirements

of § 46-211, that the withholding is binding on the new employer."

D.C. Law 15-205, in subsecs. (a) and (b), substituted "Court" for "Collection and Disbursement Unit".

D.C. Law 16-100, in subsec. (a), substituted "IV-D agency" for "Court"; and rewrote subsec. (b), which had read as follows: "(b) Within 2 business days after the receipt of information regarding the obligor's new place of employment or within 2 business days after the date information regarding the obligor is entered into the District of Columbia Directory of New Hires pursuant to § 46-226.06, whichever occurs first, the Court shall notify the obligor's new employer in accordance with the requirements of § 46-211, that the withholding is binding."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(o) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(p) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(p) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(q) of D.C. Law 16-42, in subsec. (a), substituted "IV-D agency" for "Court"; and rewrote subsec. (b) to read as follows:

"(b) The IV-D agency shall serve an order to withhold on the obligor's new employer within 2 business days after receipt of information regarding the obligor's new place of employment, or within 2 business days after the date information regarding the obligor is entered into the District of Columbia Directory of New Hires pursuant to section 27f, whichever occurs first."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(j) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(o) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(o) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(o) of the Child Support and Welfare Reform Compliance Leg-

islative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(o) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(p) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(m) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(m) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(q) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(q) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-217. Limitations and priorities.

(a) When there is more than 1 withholding order against a single obligor under this subchapter, the Collection and Disbursement Unit shall prorate the withholdings for current support among the orders up to the limits of § 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)).

(b) If current support payments do not exceed the limits of section 303(b) of the Consumer Credit Protection Act [15 U.S.C. § 1673(b)], the Collection and Disbursement Unit shall prorate payments toward health insurance coverage, medical support, arrearages, and other costs and fees among the orders and prioritize these payments in accordance with § 46-251.08 and applicable federal requirements.

(Feb. 24, 1987, D.C. Law 6-166, § 18, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(q), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(q), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-506.05.

Prior Codifications. — 1981 Ed., § 30-517.

Effect of amendments. — D.C. Law 13-269 substituted “Collection and Disbursement Unit” for “Court” throughout.

D.C. Law 16-100 rewrote subsec. (b), which had read as follows: “(b) If current support payments do not exceed the limits of § 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)), payments toward arrearages shall be prorated by the Collection and Disbursement Unit among the orders.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(p) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(q) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(q) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(r) of D.C. Law 16-42, rewrote subsec. (b), to read as follows:

“(b) If current support payments do not exceed the limits of section 303(b) of the Consumer Credit Protection Act, the Collection and Disbursement Unit shall prorate payments toward health insurance coverage, medical support, arrearages, and other costs and fees among the orders and prioritize these pay-

ments in accordance with section 108 of the Medical Support Establishment and Enforcement Amendment Act of 2004, effective March 30, 2004 (D.C. Law 15-130; D.C. Official Code § 46-251.08), and applicable federal requirements.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(p) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(p) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(p) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(p) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Congressional Re-

view Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(p) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(p) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(n) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(n) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act

of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(t) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(t) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-218. Voluntary income withholding.

(a) An obligor may obtain voluntary income withholding by filing with the IV-D agency a request for withholding and, if the support order is from another jurisdiction, a certified copy of the support order.

(b) Upon receipt of a request under subsection (a) of this section, the IV-D agency shall serve an order to withhold on the holder specified in the obligor's request. Payments shall be made through the Collection and Disbursement Unit.

(Feb. 24, 1987, D.C. Law 6-166, § 19, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(r), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(n), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(r), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-506.05.

Prior Codifications. — 1981 Ed., § 30-518.

Effect of amendments. — D.C. Law 13-269 substituted "Collection and Disbursement Unit" for "Court" throughout.

D.C. Law 15-205, in subsecs. (a) and (b), substituted "Court" for "Collection and Disbursement Unit".

D.C. Law 16-100 rewrote the section, which had read:

"(a) Any person who is the obligor on a support order of this jurisdiction or another jurisdiction may obtain voluntary income withholding by filing with the Court a request for withholding and a certified copy of the support order if the order is from another jurisdiction.

"(b) Upon receipt of a request under subsection (a) of this section and appropriate documentation, the Court shall issue a notice to the holder pursuant to § 46-211. Payment shall be made through the Court."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(q) of Child Support and Welfare Reform

Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(s) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 19. Voluntary income withholding.

"(a) An obligor may obtain voluntary income withholding by filing with the IV-D agency a request for withholding and, if the support order is from another jurisdiction, a certified copy of the support order.

"(b) Upon receipt of a request under subsection (a) of this section, the IV-D agency shall serve an order to withhold on the holder specified in the obligor's request. Payments shall be

made through the Collection and Disbursement Unit.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(q) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(q) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(q) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(q) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(q) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(q) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(q) of the Child Support and

Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(q) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(q) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(u) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(u) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-219. No discrimination in employment for withholding.

(a) No employer shall discharge, refuse to employ, take disciplinary action, or otherwise discriminate against any obligor for the reason that a party has subjected or attempted to subject unpaid earnings of the obligor to withholding or like proceedings for the purposes of paying support.

(b) There shall be a rebuttable presumption that any employer who engages in conduct described in subsection (a) of this section, within 90 days from the date of receipt of a notice or order to withhold, is in violation of this subchapter and may be subject to the sanctions in subsection (c) of this section.

(c) Any employer who engages in conduct described in subsection (a) of this section shall be subject to a civil penalty of up to \$10,000.

(d) Any civil penalty obtained under subsection (c) of this section shall be used to offset the obligor's duty of support.

(Feb. 24, 1987, D.C. Law 6-166, § 20, 33 DCR 6710; May 12, 2006, D.C. Law 16-100, § 3(s), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-211, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-519.

Effect of amendments. — D.C. Law 16-

100, in subsec. (a), deleted “employee or” preceding “obligor” and substituted “purposes of paying” for “purposes of paying child”; in subsec. (b), substituted “a notice or order to withhold,” for “the notice to the holder pursu-

ant to § 46-211.”; and in subsec. (d), substituted “duty of” for “duty of child”.

Temporary Amendment of Section. — Section 3(t) of D.C. Law 16-42, in subsec. (a), deleted “employee or”, and deleted “child” after “purposes of paying”; in subsec. (b), substituted “a notice or order to withhold,” for “the notice to the holder pursuant to section 12,”; and in subsec. (d) deleted “child” after “duty of”.

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(t) of

Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(t) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-220. Payments by employer where employee has no salary or salary inadequate for services rendered.

Where the obligor claims to be rendering services without salary or compensation, or at a salary or compensation so inadequate as to satisfy the Court that the salary or compensation is merely colorable and designed to defraud or impede withholding, the Court may direct the employer to make payments to satisfy the withholding in installments, based upon a reasonable value of the services rendered by the obligor under this employment or upon the obligor’s current earnings ability.

(Feb. 24, 1987, D.C. Law 6-166, § 21, 33 DCR 6710; May 12, 2006, D.C. Law 16-100, § 3(t), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-520.

Effect of amendments. — D.C. Law 16-100 substituted “satisfy the withholding” for “satisfy the withholding order”.

Temporary Amendment of Section. — Section 3(u) of D.C. Law 16-42 deleted “order” following “satisfy the withholding”.

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(u) of

Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(u) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-221. Quashing withholding where judgment obtained to hinder just claims.

Where a notice or order to withhold issued under this subchapter is based upon a judgment obtained by default or consent without a trial upon the merits, the Court, upon motion of an interested person, may quash the withholding upon satisfactory proof that the judgment was obtained without just cause and solely for the purpose of preventing or delaying the satisfaction of just claims.

(Feb. 24, 1987, D.C. Law 6-166, § 22, 33 DCR 6710; May 12, 2006, D.C. Law 16-100, § 3(u), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-521.

Effect of amendments. — D.C. Law 16-100 substituted “notice or order to withhold” for “notice of withholding”.

Temporary Amendment of Section. — Section 3(v) of D.C. Law 16-42 substituted “notice or order to withhold” for “notice of withholding”.

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

(90 day) amendment of section, see § 3(v) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(v) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-222. Interstate withholding.

(a) Upon receipt of notice from another state that withholding is required to enforce a support order, including all documents and information necessary to carry out the withholding, the IV-D agency shall implement the withholding in accordance with § 46-207.01.

(b) If the IV-D agency determines that the obligor is no longer employed in the District of Columbia, the IV-D agency shall provide the initiating jurisdiction with the name and address of the obligor and the obligor’s new employer, if known.

(c) The IV-D agency, upon receiving a certified copy of a modification of a support order entered or registered in the District of Columbia, shall initiate necessary procedures to amend or modify a withholding that is based on the support order that has been modified.

(Feb. 24, 1987, D.C. Law 6-166, § 23, 33 DCR 6710; Apr. 30, 1988, D.C. Law 7-104, § 23, 35 DCR 147; Apr. 9, 1997, D.C. Law 11-170, § 2(e), 43 DCR 4480; Apr. 3, 2001, D.C. Law 13-269, § 108(s), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(o), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(v), 53 DCR 1886.)

Cross references. — Withholding of income, contests, see § 46-210.

Withholding of income for arrearages, see § 46-209.

Withholding of income, support order of another jurisdiction docketed pursuant to this section, see § 46-207.

Section references. — This section is referred to in §§ 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-522.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“§ 46-222. Interstate withholding; procedure for entering a support order of another jurisdiction for withholding.

“(a) Upon receiving a support order of another jurisdiction from an appropriate agency

of the other jurisdiction, with the documentation specified in subsection (c) of this section, the following shall take place:

“(1) The Clerk of the Family Division of the Court shall accept the documents filed and enter the support order upon the docket and that entry shall constitute acceptance of the support order under this chapter;

“(2) The Clerk of the Court shall process withholding under this chapter; and

“(3) The Clerk of the Court shall issue a notice to withhold pursuant to § 46-211 and, within 15 calendar days of locating the obligor or the holder, the Clerk of the Court shall issue a notice of intent to withhold pursuant to § 46-209, which shall include the following:

“(A) A statement that, if contested, a support

order entered pursuant to this section and the accompanying sworn or certified statement shall constitute prima facie proof, without further proof of foundation, that the support order is valid, that the amount of current support payments and arrearages is as stated, and that the payee would be entitled to withholding under the law of the jurisdiction that issued the support order;

“(B) A statement that, once a prima facie case has been established, the obligor may raise, in addition to those rights available under this section, only matters that would be available to him as defenses in an action to enforce a foreign money judgment; and

“(C) A statement that, if the obligor shows to the Court that an appeal from the order is pending, will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the defendant has furnished security for payment of the support ordered as required by the initiating jurisdiction.

“(b) Any stay granted as referred to in subsection (a)(3)(C) of this section shall also stay the time limitations for rendering a decision on withholding pursuant to §§ 46-216(b) and 46-210(b).

“(c) The following documentation is required for the entry of a support order of another jurisdiction:

“(1) A certified copy of the support order with all modifications;

“(2) A certified copy of any income withholding order or notice still in effect;

“(3) A copy of the portion of the income withholding statute of the jurisdiction that issued the support order, which states the requirements for obtaining income withholding under the law of the jurisdiction;

“(4) A sworn statement of the obligee or certified statement of the agency of the arrearages, if any; and

“(5) A statement of:

“(A) The name, address, and social security number of the obligor, if known;

“(B) The name and address of the obligor's employer in this jurisdiction or of any other source of earnings or other income of the obligor derived in the District against which income withholding is sought; and

“(C) The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

“(d) If the documentation received by the Court pursuant to subsection (a) of this section does not conform to the requirements of subsection (c) of this section, the Court shall remedy any defect that it can without the assistance of the requesting agency or person. If the Court is unable to make the corrections, the requesting

agency or person shall be notified of the necessary additions or corrections. If required by the initiating jurisdiction, the Clerk of the Court shall provide the information necessary to carry out the withholding within 30 calendar days of receipt of the initiating jurisdiction's request for information. The Court shall accept the documentation required by subsections (a) and (c) of this section even if it is not in the usual form required by state or local rules, so long as the substantive requirements of these subsections are met.

“(e) If the earnings or other income of the obligor is not derived in the District, the Court shall notify the initiating jurisdiction that no action will be taken.

“(f) Entry of the order shall not confer jurisdiction on the Court for any purpose other than withholding of earnings or other income.

“(g) The Court, upon receiving a certified copy of any amendment or modification to a support order entered, shall initiate, as though it was a support order of this jurisdiction, necessary procedures to amend or modify the income withholding order or notice of jurisdiction that was based upon the entered support order.

“(h) If the Court determines that the obligor has obtained employment or has a new or additional source of income in another jurisdiction, it shall notify the agency that requested the income withholding of the changes within 20 working days of receiving the information and shall forward to that agency all information it has or can obtain with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income. The Court shall include with the notice a certified copy of any income withholding order in effect in this jurisdiction.”

D.C. Law 15-205, in subsecs. (a), (b), and (c), substituted “Court” for “Collection and Disbursement Unit”.

D.C. Law 16-100 rewrote the section, which had read:

“(a) For any support order entered in another jurisdiction and subject to withholding pursuant to § 46-207(c) or Chapter 3 of this title, the Court shall implement the withholding upon receipt of notice from the initiating jurisdiction, including all information necessary to carry out the withholding, and, if necessary, provide the initiating jurisdiction with all information necessary to carry out the withholding within 30 calendar days of receiving a request for the information from the initiating jurisdiction.

“(b) The Court or the IV-D agency shall notify the initiating jurisdiction if it determines that the obligor is no longer employed in the District of Columbia and shall provide to the initiating jurisdiction the name and address of the obligor and the obligor's new employer, if known.

“(c) The Court, upon receiving a certified copy of any modification of a support order entered

or registered in the District of Columbia, shall initiate necessary procedures to amend or modify the withholding order that was based on the order that has been modified."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Child Support Enforcement Temporary Amendment Act of 1995 (D.C. Law 11-47, September 20, 1995, law notification 42 DCR 5506).

For temporary (225 day) amendment of section, see § 2(e) of Child Support Enforcement Temporary Amendment Act of 1996 (D.C. Law 11-148, May 20, 1996, law notification 43 DCR 4353).

For temporary (225 day) amendment of section, see § 7(r) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(s) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(s) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(w) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 23. Interstate withholding.

"(a) Upon receipt of notice from another state that withholding is required to enforce a support order, including all documents and information necessary to carry out the withholding, the IV-D agency shall implement the withholding in accordance with section 8a.

"(b) If the IV-D agency determines that the obligor is no longer employed in the District of Columbia, the IV-D agency shall provide the initiating jurisdiction with the name and address of the obligor and the obligor's new employer, if known.

"(c) The IV-D agency, upon receiving a certified copy of a modification of a support order entered or registered in the District of Columbia, shall initiate necessary procedures to amend or modify a withholding that is based on the support order that has been modified."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and see § 2(e) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary amendment of section, see § 7(r) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(r) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(r) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(r) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(s) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(s) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(s) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(s) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(s) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(o) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(o) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(w) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(w) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 7-104. — Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and Dec. 8, 1987, respectively. Signed by the Mayor on Dec. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-170. — For legislative history of D.C. Law 11-170, see Historical and Statutory Notes following § 46-205.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

CASE NOTES

In general.

Since defendant worked for a part of the Navy's Office of General Counsel that was physically located in Virginia, he was employed in that state; under the clear meaning of the word "derived" and the legislative intent behind subsection (e) of this section, defendant did not

physically earn or derive his earnings or other income in the District of Columbia. Consequently, under subsection (e) of this section and 45 C.F.R. § 303.100(g)(4) (1987), Superior Court must notify initiating jurisdiction that it will take no action. *Rosenberg v. Rosenberg*, 116 WLR 1469 (Super. Ct. 1988).

§ 46-223. Initiation of withholding in other jurisdictions.

(a) When an obligor under a support order derives income in another jurisdiction, the IV-D agency, the Court, or any other appropriate person or entity may serve a notice or order to withhold on a holder in the jurisdiction where the obligor receives income.

(b) In any case being enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), where the IV-D agency determines that the obligor derives income in another jurisdiction and that interstate withholding is necessary to enforce the support order, the IV-D agency shall, within 20 days of this determination, notify the IV-D agency in the jurisdiction in which the obligor derives income to implement interstate withholding. The notice shall include all information necessary to carry out the withholding, including:

- (1) The amount requested to be withheld;
- (2) A copy of the support order with all modifications; and
- (3) A statement of arrears, if appropriate.

(Feb. 24, 1987, D.C. Law 6-166, § 24, 33 DCR 6710; Apr. 9, 1997, D.C. Law 11-170, § 2(f), 43 DCR 4480; Apr. 3, 2001, D.C. Law 13-269, § 108(t), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(p), 51 DCR 8441; May 12, 2006, D.C. Law 16-100, § 3(w), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-523.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

"(a) Where an obligor under an order of support as described in § 46-207 derives income in another jurisdiction, any caretaker, custodian, responsible relative, or the Mayor may file an application requesting the Clerk of the Court to request the appropriate agency in the other jurisdiction to issue a notice or order to withhold that income.

"(b) Within 20 calendar days of a determination that a withholding is required in a particular case and receipt of information necessary to carry out the withholding, the Clerk of the Court shall notify the IV-D agency in the jurisdiction in which the obligor is employed to implement interstate withholding. The notice shall include all information necessary to carry out the withholding, including:

- "(1) The amount requested to be withheld;
- "(2) A certified copy of the support order with all modifications;

"(3) A certified copy of any income withholding order or notice still in effect; and

"(4) If appropriate, a sworn statement of the obligee or certified statement of the IV-D agency of the arrearages."

D.C. Law 15-205, in subsec. (a), substituted "Court" for "Collection and Disbursement Unit"; and, in subsec. (b), substituted "IV-D agency" for "Collection and Disbursement Unit".

D.C. Law 16-100 rewrote the section, which had read:

"(a) When an obligor under a support order derives income in another jurisdiction, any caretaker, custodian, responsible relative, or the Mayor may request the Court to initiate withholding with the employer or holder in the jurisdiction where the obligor receives income.

"(b) Within 20 calendar days of a determination that a withholding is required in a particular case and receipt of information necessary to carry out the withholding, the IV-D agency shall notify the IV-D agency in the jurisdiction in which the obligor is employed to implement interstate withholding. The notice shall include all information necessary to carry out the withholding, including:

"(1) The amount requested to be withheld;

"(2) A copy of the support order with all modifications;

"(3) A statement of arrears, if appropriate; and

"(4) Repealed."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f) of Child Support Enforcement Temporary Amendment Act of 1995 (D.C. Law 11-47, September 20, 1995, law notification 42 DCR 5506).

For temporary (225 day) amendment of section, see § 2(f) of Child Support Enforcement Temporary Amendment Act of 1996 (D.C. Law 11-148, May 20, 1996, law notification 43 DCR 4353).

For temporary (225 day) amendment of section, see § 7(s) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(t) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(t) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(x) of D.C. Law 16-42 rewrote section to read as follows:

"Sec. 24. Initiation of withholding in other jurisdictions.

"(a) When an obligor under a support order derives income in another jurisdiction, the IV-D agency, the Court, or any other appropriate person or entity may serve a notice or order to withhold on a holder in the jurisdiction where the obligor receives income.

"(b) In any case being enforced by the IV-D agency pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), where the IV-D agency determines that the obligor derives income in another jurisdiction and that interstate withholding is necessary to enforce the support order, the IV-D agency shall, within 20 days of this determination, notify the IV-D agency in the jurisdiction in which the obligor derives income to implement interstate withholding. The notice shall include all information necessary to carry out the withholding, including:

"(1) The amount requested to be withheld;

"(2) A copy of the support order with all modifications; and

"(3) A statement of arrears, if appropriate."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(s) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(s) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(s) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(s) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 2(f) of the Child Support Enforcement Emergency Amendment Act of 1996 (D.C. Act 11-250, April 15, 1996, 43 DCR 2131), § 2(f) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-304, July 31, 1996, 43 DCR 4474), and § 2(f) of the Child Support Enforcement Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-31, March 11, 1997, 44 DCR 1904).

For temporary (90-day) amendment of section, see § 107(t) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(t) of the Child Support and Welfare Reform Compliance Legislative Review

Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(t) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(t) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(t) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(p) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(p) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(x) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(x) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 11-170. — For legislative history of D.C. Law 11-170, see Historical and Statutory Notes following § 46-205.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

CASE NOTES

In general.

Enforcement of Superior Court's child support order against father by direct interstate service of income withholding orders upon father's employer in Virginia was harmless error, where father had fair notice of the ministerial

directives to effect withholding, and there was no indication that, as a result of the method of withholding, father suffered any substantive detriment. D.C. Code 1981, § 30-523. *Desai v. Fore*, 711 A.2d 822, 1998 D.C. App. LEXIS 89 (1998).

§ 46-224. Enforcement of orders by means other than income withholding.

(a) A lien is created by operation of law against the real and personal property of an obligor subject to a support order who resides or owns property in the District for amounts of overdue support, as defined by section 466(e) of the Social Security Act, approved August 16, 1984 (98 Stat. 1310; 42 U.S.C. § 666(e)), that are owed by the obligor. In addition to withholding of earnings or other income, this lien shall be separate from and in addition to any other lien created by or provided for under law. The IV-D agency or the custodian to whom support is payable shall have the priority of a secured creditor.

(b) The lien shall be enforceable from the date the lien is filed and recorded in the Office of the Recorder of Deeds of the District of Columbia. A lien may be enforced by the IV-D agency or the custodian to whom support is payable. This remedy does not affect the availability of other remedies provided by law.

(c) If a lien has been filed in accordance with subsection (b) of this section, and a person having notice of the lien possesses nonexempt personal property of the obligor that may be subject to the lien, the property may not be paid over, released, sold, transferred, encumbered, or conveyed unless:

(1) A release of lien is signed by the party who filed the lien; or

(2) A court, after notice to the claimant and hearing, has ordered the release of the lien because arrearages do not exist.

(d) The District shall accord full faith and credit to liens described in subsection (b) of this section that arise in another state, if the other state's IV-D agency, a party to a support action, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise in the District, except that judicial notice or hearing prior to enforcement of the lien shall not be required.

(Feb. 24, 1987, D.C. Law 6-166, § 25, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(u), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(x), 53 DCR 1886.)

Section references. — This section is referred to in §§ 26-532, 46-226.03, 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-524.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

"(a) A lien may be asserted by the Mayor or the custodian to whom support is payable upon the real and personal property of the responsible relative. In addition to withholding of earnings or other income, this lien shall be separate from and in addition to any other lien created by or provided for under law. The District or the custodian to whom support is payable shall have the priority of a secured creditor.

"(b) An action to collect subrogated or assigned support by lien and foreclosure, distraint, seizure and sale, or an order to withhold and deliver shall be lawful on the date the order is issued."

D.C. Law 16-100, in par. (c), substituted "subsection (b)" for "subsection (a)".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(t) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(u) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(u) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(y) of D.C. Law 16-42, in subsec. (c), substituted "subsection (b)" for "subsection (a)".

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(t) of the Child Support and Welfare Reform Compliance Sec-

ond Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(t) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(t) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(t) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary amendment of section, see § 7(k) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary (90-day) amendment of section, see § 107(u) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(u) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(u) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(u) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(u) of Child Support and Welfare Reform Compliance Congressional Review

Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(y) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(y) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

§ 46-224.01. Interception of lottery prizes for delinquent child support payments.

(a) In the case of orders being enforced by the IV-D agency, the Mayor may intercept a lottery prize winning, including a lump sum or periodic payment that is derived from a previously claimed prize, of an individual who owes delinquent support, as defined in section 466(e) of the Social Security Act, approved August 16, 1984 (98 Stat. 1310; 42 U.S.C. § 666(e)).

(b) Prior to interception of an individual's lottery prize winnings, the Mayor shall provide notice to the lottery prize winner of the pending interception of the lottery prize winnings and of the opportunity to contest the interception of the lottery prize winnings.

(Feb. 24, 1987, D.C. Law 6-166, § 25a, as added July 25, 1990, D.C. Law 8-150, § 4(e), 37 DCR 3720; Feb. 5, 1994, D.C. Law 10-68, § 28(a), 40 DCR 6311; Apr. 3, 2001, D.C. Law 13-269, § 108(v), 48 DCR 1270.)

Section references. — This section is referred to in §§ 46-201, 46-226.03, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-524.1.

Effect of amendments. — D.C. Law 13-269 rewrote subsec. (a) which had read:

"(a) In the case of orders being enforced by the IV-D agency, the Mayor may intercept a lottery prize winning of an individual who owes delinquent support, as defined in § 466(e) of the Social Security Act, approved August 16, 1984 (98 Stat. 1310; 42 U.S.C. 666(e))."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(u) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(v) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(v) of Child Support and Welfare Reform Compliance Temporary Amendment

Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 7(u) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(u) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(u) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(u) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(v) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(v) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(v) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(v) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(v) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 8-150. — Law 8-150 was introduced in Council and assigned Bill No. 8-461, which was referred to the Committee on the Judiciary. The Bill was adopted

on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-208 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-224.02. Parent locator service.

(a) The IV-D agency is established as the District’s centralized Parent Locator Service to locate parents of children in need of support.

(b) An officer or employee of the District shall cooperate with the IV-D agency to determine the location of a parent who is not supporting his or her child. The officer or employee shall provide any pertinent information that relates to the location, income, or property of a parent, notwithstanding any District statute, ordinance, or rule that makes the information confidential.

(c) A company, corporation, partnership, association, union, organization, or entity doing business in the District shall provide the IV-D agency with the following available information, if the IV-D agency certifies that the information shall be used to locate a parent of a child in need of support and that the information obtained will be treated as confidential by the IV-D agency unless the parent’s name is published or reported to a consumer credit reporting agency pursuant to § 46-225:

- (1) Full name of the parent;
- (2) Name and address of the parent’s employer;
- (3) Social security number of the parent;
- (4) Date of birth of the parent;
- (5) Home address of the parent;
- (6) Amount of wages earned by the parent; and

(7) Number of dependents claimed by the parent on state and federal income withholding forms.

(d) A person may not knowingly refuse to give the IV-D agency information that will assist the IV-D agency in locating the parent of a child.

(e) A person who knowingly refuses to provide information or provides false information that has been requested pursuant to subsection (c) of this section, upon conviction, shall be imprisoned for not more than 3 months, fined not more than \$1,000, or both.

(Feb. 24, 1987, D.C. Law 6-166, § 25b, as added July 25, 1990, D.C. Law 8-150, § 4(e), 37 DCR 3720; Feb. 5, 1994, D.C. Law 10-68, § 28(b), 40 DCR 6311; May 12, 2006, D.C. Law 16-100, § 3(y), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-524.2.

Effect of amendments. — D.C. Law 16-100 rewrote the section, which had read:

“(a) A Parent Locator Division (‘Division’) is established within the Office of Paternity and Child Support Enforcement of the Department of Human Services to maintain a parent locator service to locate a parent of a child in need of child support.

“(b) Any officer or employee of the District shall cooperate with the Division to determine the location of a parent who is not supporting his or her child. The officer or employee shall provide any pertinent information that relates to the location, income, or property of a parent, notwithstanding any District statute, ordinance, or rule that makes the information confidential.

“(c) Any company, corporation, partnership, association, union, or organization doing business in the District shall provide the Division with the following available information, if the Division certifies that the information shall be used to locate a parent of a child in need of support and that the information obtained will be treated as confidential by the Division unless the parent’s name is published for child support arrearages pursuant to § 46-225:

- “(1) Full name of parent;
- “(2) Name and address of parent’s employer;
- “(3) Social security number of parent;
- “(4) Date of birth of parent;
- “(5) Home address of parent;
- “(6) Amount of wages earned by parent; and
- “(7) Number of dependents claimed by parent on state and federal income withholding forms.

“(d) A person may not knowingly refuse to give the parent locator service information that will assist the parent locator service in locating the parent of a child.

“(e) Any person who knowingly refuses to provide information or provides false information that has been requested pursuant to subsection (c) of this section, upon conviction, shall be imprisoned for not more than 3 months, fined not more than \$1,000, or both.”

Temporary Amendment of Section. — Section 3(z) of D.C. Law 16-42 rewrote section to read as follows:

“Sec. 25b. Parent locator service.

“(a) The IV-D agency is established as the District’s centralized Parent Locator Service to locate parents of children in need of support.

“(b) An officer or employee of the District shall cooperate with the IV-D agency to determine the location of a parent who is not supporting his or her child. The officer or employee

shall provide any pertinent information that relates to the location, income, or property of a parent, notwithstanding any District statute, ordinance, or rule that makes the information confidential.

“(c) A company, corporation, partnership, association, union, organization, or entity doing business in the District shall provide the IV-D agency with the following available information, if the IV-D agency certifies that the information shall be used to locate a parent of a child in need of support and that the information obtained will be treated as confidential by the IV-D agency unless the parent’s name is published or reported to a consumer credit reporting agency pursuant to section 26:

- “(1) Full name of the parent;
- “(2) Name and address of the parent’s employer;
- “(3) Social security number of the parent;
- “(4) Date of birth of the parent;
- “(5) Home address of the parent;
- “(6) Amount of wages earned by the parent; and

“(7) Number of dependents claimed by the parent on state and federal income withholding forms.

“(d) A person may not knowingly refuse to give the IV-D agency information that will assist the IV-D agency in locating the parent of a child.

“(e) A person who knowingly refuses to provide information or provides false information that has been requested pursuant to subsection (c) of this section, upon conviction, shall be imprisoned for not more than 3 months, fined not more than \$1,000, or both.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(z) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(z) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 8-150. — For legislative history of D.C. Law 8-150, see Historical and Statutory Notes following § 46-224.01.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 46-224.01.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-225. Reporting and publication of delinquent accounts.

(a) The IV-D agency shall report to a consumer credit reporting agency, as defined in section 603(f) of the Consumer Credit Protection Act, approved October 26, 1970 (84 Stat. 1129; 15 U.S.C. § 1681a(f)), each support order that was entered, modified, registered, or is being enforced in the District, if the obligor owes overdue support obligations in the amount of \$1,000 or more.

(a-1) The IV-D agency shall develop standards for consumer credit reporting that shall be consistent with credit reporting industry standards and reporting format.

(a-2) A report of a support order shall include, at a minimum, the amount of the obligation, the amount paid, the amount overdue (if any), and the names of the obligor and obligee. The IV-D agency shall update this information on at least a quarterly basis.

(b) The IV-D agency may publish information about an obligor whose support payments are more than \$2,000 in arrears, including the obligor's name, last known address, amount of overdue support, occupation, photograph, and physical description, and the names and ages of the individuals on behalf of whom support is owed. The publication may be made by disseminating the information using any media, or by any other means reasonably likely to assist in locating the obligor or to bring the obligor's non-payment of support to the attention of the public.

(c) The IV-D agency is responsible for the accuracy of information provided pursuant to this section. The information shall be based upon the data available at the time the information is provided to a consumer credit reporting agency. The IV-D agency and the credit reporting agency shall follow reasonable procedures to ensure accuracy of the information provided. The IV-D agency shall not be liable for any consequences of the failure of an obligor to contest the accuracy of the information within the time allowed under subsection (d) of this section.

(d) The IV-D agency shall send notice of the publication or initial consumer credit report by first-class mail to the last known address of the obligor at least 30 days before the publication or initial report. The notice shall inform the obligor of the right to contest the accuracy of the information to be released.

(e) The IV-D agency shall provide the obligor with an opportunity to contest in writing the accuracy of the information in a consumer credit report or publication. If the IV-D agency receives a written objection contesting the accuracy of the information, the IV-D agency shall request the credit reporting agency receiving the information to note on the report that the information is being disputed, until the IV-D agency determines the accuracy of the information.

(f) The only grounds for contesting the accuracy of the information in a consumer credit report or publication are errors in the identities of the obligor or obligee, the amount of the support order, the amount of payment or arrears, or any other fact published or reported to the credit reporting agency.

(g) The IV-D agency may enter into a cooperative agreement with another

District government agency, the Superior Court, or a private entity to carry out all or part of the functions required of the IV-D agency under this section.

(Feb. 24, 1987, D.C. Law 6-166, § 26, 33 DCR 6710; July 25, 1990, D.C. Law 8-150, § 4(d), 37 DCR 3720; Feb. 13, 1996, D.C. Law 11-87, § 3(a), 42 DCR 6767; Apr. 3, 2001, D.C. Law 13-269, § 108(w), 48 DCR 1270.)

Section references. — This section is referred to in §§ 46-224.02, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-525.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“(a) Upon request by an individual who is owed overdue support or a consumer reporting agency, as defined in 15 U.S.C. § 1681a(f), the Mayor shall make available information regarding an amount of overdue support as defined in 42 U.S.C. § 666(e), if the amount of overdue support is greater than \$1,000.

“(b) The Mayor may publish the name, last known address, and amount of overdue child support of an obligor, if the obligor’s child support payments are more than \$2,000 in arrears. The publication shall be in at least 2 daily and 2 weekly newspapers published and circulated generally in the District of Columbia.

“(c) The Mayor shall notify the obligor of the proposed action and of the obligor’s right to contest the accuracy of the information to be released. The Mayor shall provide the obligor with an opportunity to contest the accuracy of the information.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(v) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(w) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(w) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 7(l) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(v) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(v) of the Child Support and Welfare Reform Compliance Second Emergency

Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(v) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(v) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(w) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(w) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(w) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(w) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(w) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 8-150. — For legislative history of D.C. Law 8-150, see Historical and Statutory Notes following § 46-224.01.

Legislative history of Law 11-87. — For legislative history of D.C. Law 11-87, see Historical and Statutory Notes following § 46-225.01.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor’s Order 87-273, December 10, 1987.

§ 46-225.01. Sanctions.

(a) Notwithstanding any other law or regulation, no car registration or driver's license shall be renewed or issued to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support. Notwithstanding any other law or regulation, a car registration or driver's license that has been issued to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments shall be suspended.

(b) Notwithstanding any other law or regulation, no professional, business, recreational, or sporting license shall be renewed or issued in the District to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments. Notwithstanding any other law or regulation, a professional, business, or recreational or sporting license that has been issued to an obligor who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice, or to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments, shall be suspended.

(b-1) As used in this section, the terms "professional license" and "business license" include any approval, certificate, registration, permit, statutory exemption, or other form of permission to practice a profession or trade, or to operate a business, as granted by a commission, agency, or a professional licensing body of the government of the District of Columbia. The terms "recreational license" and "sporting license" include any approval, certificate, registration, permit, statutory exemption, or other form of permission to hunt, fish, use playing fields, participate in an athletic league, operate a boat or other recreational vehicle for a nonbusiness purpose, or operate or own a weapon for a nonbusiness purpose, as granted by a commission, agency, or a licensing body of the government of the District of Columbia.

(b-2) The obligor shall be entitled to an administrative hearing before the Mayor in accordance with procedures promulgated by the Mayor pursuant to the rulemaking provisions of Chapter 5 of Title 2, before any proposed denial, refusal to renew, or suspension of a license.

(b-3) Upon receipt of a notice from the Mayor that a license is subject to denial, refusal to renew, or suspension, the licensing agency shall, within 30 days, deny, refuse to renew, or suspend the license. The obligor may appeal the final decision of the Mayor to the Superior Court in accordance with the methods and standards of appeal set forth in §§ 2-509 and 2-510.

(c) The Mayor shall provide 30 days written notice to the obligor before denying issuance or renewal, or suspending the car registration or the driver's, professional, business, recreational, or sporting license of an obligor pursuant to this section. The notice shall specify:

- (1) That the obligor has the right to a hearing before the Mayor;

- (2) How, when, and where the notice can be contested;
- (3) The amount owed, if any;
- (4) The date on which the obligor failed to comply with a subpoena or warrant, if applicable, and the nature of the obligor's noncompliance;
- (5) That the licensing authority shall deny issuance or renewal, or suspend the registration or license, 30 days after the issuance of a decision against the obligor by the Mayor following the hearing unless:
 - (A) An obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support pays the arrearage in full, or the obligor agrees to and complies with a payment schedule that requires the obligor to make monthly child support payments toward the overdue support in an amount equal to 25% of the obligor's current monthly child support obligation for as long as the obligor is receiving income, subject to the limitations of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 1601 et seq.). If the obligor fails to comply with the payment schedule after 30 days, but before the arrears are paid in full, denial or suspension shall take place immediately and without further notice;
 - (B) An obligor who has failed to comply with a subpoena or warrant related to paternity or child support proceedings, complies with all process required by the Superior Court or IV-D agency for 30 days; or
 - (C) An obligor who is receiving income, owes at least 60 days of overdue child support, and has failed to comply with a subpoena or warrant related to paternity or child support proceedings complies with both subparagraphs (A) and (B) of this paragraph; and
- (6) That the obligor shall not be entitled to an additional hearing or review regarding the denial or suspension of the license.
- (d) The Mayor shall provide the obligor with the opportunity to demonstrate why his or her registration or license should not be denied or suspended under this section. The only issues to be determined are as follows:
 - (1) Whether the person named in the court notice is a licensee or applicant, has his or her car registered in the District of Columbia, and seeks to have a car registration issued or renewed;
 - (2) Whether the arrearage has been paid in full, or whether a payment schedule has been agreed to and complied with, if the basis for denial or suspension is failure to pay overdue child support;
 - (3) Whether the obligor is currently receiving income, if the basis for denial or suspension is failure to pay overdue child support;
 - (3A) Whether the obligor failed to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving notice; and
 - (4) Whether the driver's license or car registration or professional, business, recreational, or sporting license, should be suspended, or the issuance or renewal should be denied.
- (e) If the Clerk of the Court has notified the Mayor that an obligor has failed to comply with a subpoena or warrant relating to paternity or child support proceedings or that an obligor is receiving income and owes child support in an amount equal to at least 60 days of support, and the obligor presents no evidence under subsection (d) of this section that the obligor has complied with

the terms described in subsection (c)(5) of this section, as applicable, the obligor's license or registration shall be suspended, or the request for the issuance or renewal of the license or registration shall be denied.

(f) If the obligor under this subchapter is a member of the District of Columbia Bar, the Clerk of the Court shall send written notice to the Board of Professional Responsibility so that appropriate action may be taken.

(g) No liability shall be imposed on a licensing authority for refusing to renew, refusing to issue, or suspending a registration or license if the action is taken in response to a court or administrative order pursuant to this section.

(Feb. 24, 1987, D.C. Law 6-166, § 26a, as added Feb. 13, 1996, D.C. Law 11-87, § 3(b), 42 DCR 6767; Apr. 3, 2001, D.C. Law 13-269, § 108(x), 48 DCR 1270; Mar. 14, 2007, D.C. Law 16-279, § 208, 54 DCR 903.)

Prior Codifications. — 1981 Ed., § 30-525.1.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

(a) Notwithstanding any other law or regulation, no car registration or driver's license shall be renewed or issued to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support. A car registration or driver's license that has been issued to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments shall be revoked.

(b) Notwithstanding any other law or regulation, no professional or business license shall be renewed or issued in the District to an obligor who is receiving income and who owes overdue child support in an amount equal to at least 60 days of support payments. A professional or business license that has been issued to an obligor who is receiving income and who owes overdue child support shall be revoked. As used in this subsection, the term 'professional or business license' includes any approval, certificate, registration, permit, statutory exemption, or other form of permission to practice a profession or to operate a business, as granted by a commission or a professional licensing body of the government of the District of Columbia.

(c) Prior to an act to deny issuance or renewal, or an act to revoke, the car registration, driver's license, or professional or business license of an obligor who is receiving income and who owes overdue child support, the Mayor must provide 30-days written notice to the obligor. The notice shall specify:

"(1) The amount of arrears owed;

"(2) How, when, and where the notice can be contested;

"(3) That the licensing authority will deny issuance or renewal, or revoke the registration or license 30 days after the issuance of the notice unless the arrearage is paid in full, or the

obligor agrees to a payment schedule that requires the obligor to make monthly child support payments toward overdue support in an amount equal to 25% of the obligor's current monthly child support obligation as long as the obligor is receiving income; and

"(4) That failure to comply with the agreed to payment schedule shall result in the denial of an issuance or renewal, or a revocation, of the obligor's registration or license.

"(d) The Mayor shall provide the obligor with the opportunity to demonstrate why his or her registration or license should not be denied or revoked under this section. The only issues to be determined are as follows: (1) Whether the person named in the court is a licensee or applicant, has his or her car registered in the District of Columbia, and seeks to have a car registration issued or renewed; (2) Whether the arrearage has been paid in full, or whether a payment schedule has been agreed to and complied with; (3) Whether the obligor is currently receiving income; and (4) Whether the driver's license or car registration or professional or business license should be revoked, or the issuance or renewal should be denied.

"(e) If the Clerk of the Court has notified the Mayor that an obligor is receiving income and owes overdue child support in an amount equal to at least 60 days of support, and the obligor presents no evidence under subsection (d) of this section that the arrearage has been paid in full, or that a payment schedule has been agreed to and complied with, the obligor's license or registration shall be revoked, or the request for the issuance or renewal of a license or registration shall be denied.

"(f) If the obligor under this chapter is a member of the District of Columbia Bar, the Clerk of the Court shall send written notice to the Board of Professional Responsibility so that appropriate action may be taken."

D.C. Law 16-279, substituted "suspended" for "revoked", "suspend" for "revoke", "suspension" for "revocation", and "suspending" for "revok-

ing”, wherever each respective word appeared throughout the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(w) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(x) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(x) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 7(m) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(w) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 923), § 7(w) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(w) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(w) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(x) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(x) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(x) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(x) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(x) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 11-87. — Law 11-87, the “Child Support Enforcement and Licensing Compliance Amendment Act of 1995,” was introduced in Council and assigned Bill No. 11-225, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-158 and transmitted to both Houses of Congress for its review. D.C. Law 11-87 became effective on February 13, 1996.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-279. — Law 16-279, the “Department of Motor Vehicles Service and Safety Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-821, which was referred to Committee on Public Works and Environment. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-636 and transmitted to both Houses of Congress for its review. D.C. Law 16-279 became effective on March 14, 2007.

CASE NOTES

ANALYSIS

Double jeopardy.
Right to hearing.

Double jeopardy.

District of Columbia statute, authorizing revocation of driver's license or vehicle registration of parent for failing to comply with subpoena or warrant relating to paternity or child support proceeding, imposed administrative civil forfeiture, rather than criminal punish-

ment, and thus, any underlying proceeding to enforce parent's child support payments or sanctions for his failure to pay child support did not constitute double jeopardy. *Taylor v. District of Columbia*, 606 F.Supp.2d 93, 2009 U.S. Dist. LEXIS 26490 (2009), appeal dismissed by 2009 U.S. App. LEXIS 23411 (D.C. Cir. Oct. 15, 2009).

Right to hearing.

District of Columbia statute, authorizing re-

vocation of driver's license or vehicle registration of parent for failing to comply with subpoena or warrant relating to paternity or child support proceeding, did not violate procedural due process rights of parent who received notice of proposed revocation due to nonpayment of child support, since notice expressly informed

parent of his right to hearing, and advised him where and how to request hearing. *Taylor v. District of Columbia*, 606 F.Supp.2d 93, 2009 U.S. Dist. LEXIS 26490 (2009), appeal dismissed by 2009 U.S. App. LEXIS 23411 (D.C. Cir. Oct. 15, 2009).

§ 46-225.02. Criminal contempt remedy for failure to pay child support.

(a) The Mayor or a party who has a legal claim to child support may initiate a criminal contempt action for failure to pay the support by filing a motion in the civil action in which the support order was established.

(b)(1) Upon a finding by the Court that an obligor has willfully failed to obey a lawful support order, the Court may:

(A) Commit the obligor to jail for a term not to exceed 180 days;

(B) Order the obligor to participate in a rehabilitative program, if the Court determines that participation would assist the obligor in complying with the support order and access to such program is available;

(C) Order the obligor to accept appropriate available employment or participate in job search and placement activities; or

(D) Place the obligor on probation under such conditions as the Court may determine and in accordance with the provisions of the criminal procedure law.

(2) The Court may direct that an obligor's commitment may be served upon certain specified days or parts of days. The Court may suspend all or part of a sentence and may, at any time within the term of the sentence, revoke the suspension and commit the obligor for the remainder of the original sentence. A period of commitment shall not prevent the Court from committing the obligor for a subsequent failure to comply with a support order.

(3) For the purposes of paragraph (1)(B) of this subsection, the term "rehabilitative program" shall include work preparation and skill programs, non-residential alcohol and substance abuse programs, and educational programs.

(c) The Court shall order the obligor to pay the petitioner's attorney's fees as well as court costs, unless good cause can be demonstrated on the record against this result.

(d) For purposes of this section, failure to pay child support, as ordered, shall constitute prima facie evidence of a willful violation. This presumption may be rebutted if the obligor was incarcerated, hospitalized, or had a disability during the period of nonsupport. These circumstances do not constitute an exhaustive list of circumstances that may be used to rebut the presumption of willfulness.

(e) The Court shall not deny a request for relief pursuant to this section unless the facts and circumstances constituting the reasons for its determination are set forth in a written memorandum of decision.

(Feb. 24, 1987, D.C. Law 6-166, § 26b, as added Mar. 6, 2002, D.C. Law 14-81,

§ 2, 49 DCR 11270); May 12, 2006, D.C. Law 16-100, § 3(z), 53 DCR 1886; Apr. 24, 2007, D.C. Law 16-305, § 72, 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-100 rewrote the section, which had read:

“(a) The Mayor or any party who has a legal claim to any child support may initiate a criminal contempt action for failure to pay the support by filing a motion in the civil action in which the child support order was established.

“(b)(1) Upon a finding by the court that an obligor has willfully failed to obey any lawful order of child support, the court may:

“(A) Commit the obligor to jail for a term not to exceed 180 days;

“(B) Order the obligor to participate in a rehabilitative program, if the court determines that participation would assist the obligor in complying with the order of child support and access to such program is available;

“(C) Order the obligor to accept appropriate available employment or participate in job search and placement activities; or

“(D) Place the obligor on probation under such conditions as the court may determine and in accordance with the provisions of the criminal procedure law.

“(2) The court may direct that an obligor’s commitment may be served upon certain specified days or parts of days. The court may suspend all or part of a sentence and may, at any time within the term of the sentence, revoke the suspension and commit the obligor for the remainder of the original sentence. A period of commitment shall not prevent the court from committing the obligor for a subsequent failure to comply with an order of child support.

“(3) For the purposes of paragraph (1)(B) of this subsection, the term ‘rehabilitative program’ shall include work preparation and skill programs, non-residential alcohol and substance abuse programs, and educational programs.

“(c) The court shall order the obligor to pay the petitioner’s attorney fees as well as the court costs, unless good cause can be demonstrated on the record against this result.

“(d) For purposes of this section, failure to pay child support, as ordered, shall constitute prima facie evidence of a willful violation. This presumption may be rebutted if the obligor was incarcerated, hospitalized, or disabled during the period of nonsupport. These circumstances do not constitute an exhaustive list of circumstances that may be used to rebut the presumption of willfulness.

“(e) The court shall not deny any request for relief pursuant to this section unless the facts and circumstances constituting the reasons for its determination are set forth in a written memorandum of decision.”

D.C. Law 16-305, in subsec. (d), substituted “had a disability” for “disabled”.

Temporary Amendment of Section. — Section 3(aa) of D.C. Law 16-42 rewrote section to read as follows:

“Sec. 26b. Criminal contempt remedy for failure to pay child support.

“(a) The Mayor or a party who has a legal claim to child support may initiate a criminal contempt action for failure to pay the support by filing a motion in the civil action in which the support order was established.

“(b)(1) Upon a finding by the Court that an obligor has willfully failed to obey a lawful support order, the Court may:

“(A) Commit the obligor to jail for a term not to exceed 180 days;

“(B) Order the obligor to participate in a rehabilitative program, if the Court determines that participation would assist the obligor in complying with the support order and access to such program is available;

“(C) Order the obligor to accept appropriate available employment or participate in job search and placement activities; or

“(D) Place the obligor on probation under such conditions as the Court may determine and in accordance with the provisions of the criminal procedure law.

“(2) The Court may direct that an obligor’s commitment may be served upon certain specified days or parts of days. The Court may suspend all or part of a sentence and may, at any time within the term of the sentence, revoke the suspension and commit the obligor for the remainder of the original sentence. A period of commitment shall not prevent the Court from committing the obligor for a subsequent failure to comply with a support order.

“(3) For the purposes of paragraph (1)(B) of this subsection, the term ‘rehabilitative program’ shall include work preparation and skill programs, non-residential alcohol and substance abuse programs, and educational programs.

“(c) The Court shall order the obligor to pay the petitioner’s attorney’s fees as well as court costs, unless good cause can be demonstrated on the record against this result.

“(d) For purposes of this section, failure to pay child support, as ordered, shall constitute prima facie evidence of a willful violation. This presumption may be rebutted if the obligor was incarcerated, hospitalized, or disabled during the period of nonsupport. These circumstances do not constitute an exhaustive list of circumstances that may be used to rebut the presumption of willfulness.

"(e) The Court shall not deny a request for relief pursuant to this section unless the facts and circumstances constituting the reasons for its determination are set forth in a written memorandum of decision."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Child Support Enforcement Emergency Amendment Act of 2001 (D.C. Act 14-181, November 19, 2001, 48 DCR 11069).

For temporary (90 day) amendment of section, see § 3(aa) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(aa) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 14-81. — Law

14-81, the "Child Support Enforcement Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-26, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 29, 2001, it was assigned Act No. 14-201 and transmitted to both Houses of Congress for its review. D.C. Law 14-81 became effective on March 6, 2002.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

CASE NOTES

ANALYSIS

Burden of proof.

Evidence.

In general.

Burden of proof.

Under statute setting forth criminal contempt remedy for failure to comply with a court order to pay child support, which includes a rebuttable presumption of willfulness on part of defendant, the defendant bears the burden of production, or the presentation of evidence showing an inability to pay, but the government bears the burden of persuasion, i.e., the burden of proving willfulness as an element of criminal contempt. In re Warner, 905 A.2d 233, 2006 D.C. App. LEXIS 481 (2006).

Evidence.

Evidence was sufficient to prove that defendant's failure to pay court-ordered child support was willful, which, in turn, supported conviction for criminal contempt for failure to pay child support; government presented and confronted defendant on cross-examination with evidence showing he had worked during certain period, as well as an income tax return and an employment application, trial court took judicial notice that defendant had been found in civil contempt seven times due to his non-payment of child support as required by prior court order, and neither defendant's asthma nor his knee prevented him from working. In re Warner, 905 A.2d 233, 2006 D.C. App. LEXIS 481 (2006).

Evidence was sufficient to show that defendant's continual failure to comply with child support order was willful, as required to support conviction for criminal contempt for failure to pay child support, in view of uncontested, un rebutted evidence that defendant had been held in civil contempt on two prior occasions for failure to pay support, and that he owed over \$34,000 in missed payments and was in arrears of more than \$3,000 to state for medicaid payments paid on children's behalf. Rogers v. Johnson, 862 A.2d 934, 2004 D.C. App. LEXIS 638 (2004).

In general.

When a defendant relies on an affirmative defense to demonstrate his inability to pay, for purposes of criminal contempt statute for failure to pay child support which includes a rebuttable presumption of willfulness on part of defendant, the government must, as part of its burden to establish willfulness, prove an ability to pay or a voluntary impairment of the ability to comply with the court order due, for example, to voluntary unemployment or underemployment. In re Warner, 905 A.2d 233, 2006 D.C. App. LEXIS 481 (2006).

A defendant's failure to rebut a prima facie case of criminal contempt could result in an adverse decision to him or her; indeed, the trial court could find the government proved an element of the crime beyond a reasonable doubt, absent a countervailing explanation by the defendant. Rogers v. Johnson, 862 A.2d 934, 2004 D.C. App. LEXIS 638 (2004).

§ 46-226. Limitation of liability.

(a) Neither the District nor its officers or employees shall be responsible for any injury resulting from the improper enforcement of a lien or a notice or order to withhold, except that the District, its officers, and employees shall be liable for damages caused by gross negligence in the enforcement of liens or withholdings.

(b) A holder who complies with a notice or order to withhold that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with that notice.

(c) No public or private entity shall be liable for injury resulting from providing access to records under § 46-226.03(a)(2) through (4).

(Feb. 24, 1987, D.C. Law 6-166, § 27, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(y), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(aa), 53 DCR 1886.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-526.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“Neither the District nor its officers or employees shall be responsible for any injury resulting from the improper enforcement of a lien, except that the District, its officers, and employees shall be liable for damages caused by gross negligence in the enforcement of liens.”

D.C. Law 16-100, in subsec. (a), substituted “notice or order to withhold,” for “notice of income withholding;”; and in subsec. (b), substituted “a notice or order to withhold” for “an income withholding notice”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(x) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 107(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Section 3(bb) of D.C. Law 16-42, in subsec. (a), substituted “notice or order to withhold,” for “notice of income withholding;”; and in subsec. (b), substituted “a notice or order to withhold” for “an income withholding notice”.

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 7(x) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(x) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(x) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(x) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) amendment of section, see § 107(y) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(y) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(y) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(y) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(bb) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(bb) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-226.01. Child support enforcement funding.

(a) The following payments received by the District under Part D of Title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), and appropriated by Congress shall be allocated exclusively to the IV-D agency for the purpose of funding for the IV-D program:

(1) Reimbursements from the federal government for fixed percentages of the costs of administering the IV-D program;

(2) Incentive payments received by the District based on the performance of the District's IV-D program;

(3) Support collections retained by the District pursuant to section 457 of the Social Security Act, approved January 4, 1975 (88 Stat. 2356; 42 U.S.C. § 657); and

(4) Reimbursements and fees received in connection with the operation of the IV-D program.

(b) The payments specified in subsection (a)(2), (3), and (4) of this section shall not lapse at the end of any fiscal year or at any other time, but shall continue to be available to the IV-D agency for the purpose of funding the IV-D program until expended, subject to authorization by Congress in an appropriations act.

(c) The payments allocated to the IV-D agency pursuant to subsection (a) of this section shall be in addition to the annual appropriation for the IV-D agency.

(Feb. 24, 1987, D.C. Law 6-166, § 27a, as added Aug. 17, 1991, D.C. Law 9-39, § 4(c), 38 DCR 4970; Nov 13, 2003, D.C. Law 15-39, § 902, 50 DCR 5668.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-526.1.

Effect of amendments. — D.C. Law 15-39 rewrote the section which had read as follows: “§ 46-226.01. Funding.” “Incentive payments received by the District under title IV-D of the Social Security Act (42 U.S.C. § 651 et seq.), based upon the District's IV-D program performance, and payments for fixed percentages of the costs of administering the IV-D program, which are reimbursed by the federal government, shall be appropriated to the IV-D agency for the purpose of funding for the program. This amount shall be in addition to the annual appropriation for the IV-D agency and the IV-D

agency shall spend those funds as though appropriated through the annual appropriation for the year in which they are received.”

Emergency legislation. — For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90 day) amendment of section, see § 902 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 902 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 9-5. — Law 9-5 was introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 5, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-39. — Law 9-39 was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Short title. — Short title of title IX of Law 15-39: Section 901 of D.C. Law 15-39 provided that title IX of the act may be cited as the Child Support Enforcement Program Funding Amendment Act of 2003.

§ 46-226.02. Filing of identifying information by parties to paternity and support proceedings.

(a) Upon the first personal appearance before the IV-D agency or the Court in a paternity or child support matter, or upon entry of an order of paternity or child support, whichever is earlier, each party to a paternity or child support proceeding in the District of Columbia shall file and update as necessary with the IV-D agency and with the Court the following information:

- (1) Name;
- (2) Residential and mailing addresses and telephone numbers;
- (3) Name, address, and telephone number of all employers, including all names under which each employer does business, and, if the party is self-employed, the party’s business address and all names under which the party does business;
- (4) Social security number; and
- (5) Driver’s license number.

(b) Provision of information pursuant to subsection (a) of this section shall be subject to the safeguards provided to victims or potential victims of domestic violence under § 16-925 and any applicable privacy protections under federal or District law.

(c) A party shall update any information required pursuant to subsection (a) of this section within 10 days of any change in that information.

(Feb. 24, 1987, D.C. Law 6-166, § 27b, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(q), 51 DCR 8441.)

Effect of amendments. — D.C. Law 15-205, in subsec. (a), substituted “with the Court” for “with the Collection and Disbursement Unit”.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emer-

gency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(q) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(q) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

§ 46-226.03. Authority of IV-D agency to expedite paternity and support processes.

(a) The IV-D agency may take the following actions relating to paternity establishment or the establishment, modification, or enforcement of support orders without obtaining an order from any judicial or other administrative tribunal:

- (1) Order genetic testing relating to the establishment of paternity;
- (2) Issue an administrative subpoena to an individual or public or private entity (including a financial institution) for financial or other information needed to establish, modify, or enforce a support order, which may include information from a public utility or cable television company, that provides the name and address of a customer or a customer's employer as well as information in paragraph (3) of this subsection;
- (3) Require a public or private entity in the District to provide promptly, in response to a request from the District's IV-D agency or any other state's IV-D agency, information on the employment status, number of hours worked, title, employment start date, employment termination date (if applicable), whether the employee ever quit voluntarily, location of work site, compensation, and benefits (including access to health insurance) of any employee of the entity, or of one of its contractors;
- (4) Obtain prompt access, including automated access, to information in the following records maintained or possessed by the District government, subject to any applicable privacy provisions under District or federal law:

- (A) Vital records maintained by the Registrar and the court;
- (B) Tax and revenue records;
- (C) Records of real and titled personal property;
- (D) Records of occupational, professional, recreational, and sporting licenses issued under any District law or regulation;
- (E) Records concerning the ownership and control of corporations, partnerships, and other business entities;
- (F) Employment security records, subject to such restrictions as the Mayor may, by regulation, prescribe pursuant to Chapter 1 of Title 51;
- (G) Records concerning public assistance, as defined in § 4-201.01(6), subject to confidentiality restrictions set forth in the Chapter 2 of Title 4 or prescribed by the Mayor;
- (H) Records maintained by the Department of Motor Vehicles;
- (I) Records maintained by the Department of Corrections; and
- (J) Social security numbers on file, if submitted in an application;
- (5) Direct an obligor or other payor to substitute for the payee of a support order the appropriate governmental entity, upon notice to the obligor (or other payor) and obligee, sent by first-class mail, to their last known address, if the support is subject to:
 - (A) An assignment to pay the District government under Chapter 2 of Title 4, title IV, part E of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 *et seq.*), or section 1912 of the Social Security Act, approved October 25, 1977 (91 Stat. 1196; 42 U.S.C. § 1396k); or
 - (B) A requirement to pay support through the Collection and Disbursement Unit;
- (6) Order income withholding, including the amount of periodic support payments and any additional amount for health insurance coverage, medical support, overdue support payments, and other costs or fees required under a support order;
- (7) When there is a support arrearage, secure assets to satisfy any current support obligation and the support arrearage by:
 - (A) Intercepting or seizing periodic or lump-sum payments from:
 - (i) Any District agency, including payments for unemployment compensation, worker's compensation, and other non-means-tested public benefits; and
 - (ii) Judgments, settlements, and lotteries (interception or seizure of lottery prize winnings shall be made pursuant to § 46-224.01);
 - (B) Attaching and seizing assets owned by the support obligor and held in financial institutions, or held in a financial institution by another on behalf of the support obligor;
 - (C) Attaching public and private retirement funds, to the extent permitted by federal law; and
 - (D) Imposing liens pursuant to § 46-224 and, when appropriate, forcing the sale of property and distributing the proceeds;
- (8) Increase the amount of periodic support payments to include amounts for arrearages, subject to section 303 of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 USC § 1673), to secure overdue support; and

(9) Enter agreements with financial institutions pursuant to Chapter 5A of Title 26.

(b) The IV-D agency shall provide notice of any action taken under subsection (a) of this section to any person or entity, other than another agency of the District government, that is subject to the action, except that the IV-D agency shall provide notice of withholding to the obligor only as required pursuant to § 46-209.

(c) Any person or entity subject to any IV-D action under subsection (a) of this section, other than another agency of the District government, is entitled to an administrative proceeding before the IV-D agency to contest the action and to judicial review based upon the administrative record. The procedures set forth in §§ 2-509 and 2-510 shall apply to the administrative proceeding and the judicial review, respectively. This subsection shall not apply to IV-D agency actions related to the withholding of earnings or other income under this subchapter.

(d) The Superior Court may issue an ex parte order to enforce any power asserted by the IV-D agency pursuant to subsection (a) of this section upon petition by the IV-D agency.

(e) A person or entity shall honor an administrative subpoena issued pursuant to subsection (a)(2) of this section to the same extent as a judicial subpoena issued by the Court. The subpoena issued pursuant to subsection (a)(2) of this section may be served by first-class mail. If any person or entity neglects or otherwise fails to comply with an administrative subpoena issued pursuant to subsection (a)(2) of this section, the IV-D agency may report the noncompliance to the Court, and the Court is empowered to compel obedience to the subpoena to the same extent that it may compel obedience to subpoenas issued by the Court.

(f) As an alternative to judicial enforcement pursuant to subsections (d) and (e) of this section, the IV-D agency may impose a civil penalty of up to \$1,000 per incident for failure to comply with an administrative subpoena issued pursuant to subsection (a)(2) of this section, or a request for information made pursuant to subsection (a)(3) of this section. The IV-D agency may double the penalty if the failure to comply persists for more than 30 days after the date the subpoena or request required compliance. The Court is authorized to enter a penalty assessed by the IV-D agency pursuant to this subsection as a judgment in the Court, upon application by the IV-D agency, and that judgment shall be enforceable by the Attorney General for the District of Columbia.

(g) A District government agency shall promptly provide information in response to a request by the IV-D agency made pursuant to subsection (a)(4) of this section. If a District government agency fails to provide information requested by the IV-D agency pursuant to subsection (a)(4) of this section, the Mayor shall promptly direct the agency to comply within a period specified by the Mayor.

(h) No public or private entity providing the IV-D agency with information or access to information pursuant to this section shall be liable under any District law to any person for providing the information or access.

(i) The IV-D agency shall promulgate rules pursuant to subchapter I of Chapter 5 of Title 2 to implement this section.

(Feb. 24, 1987, D.C. Law 6-166, § 27c, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270; Apr. 13, 2005, D.C. Law 15-354, § 71, 52 DCR 2638; May 12, 2006, D.C. Law 16-100, § 3(bb), 53 DCR 1886; Mar. 2, 2007, D.C. Law 16-191, § 48(g), 53 DCR 6794; Aug. 16, 2008, D.C. Law 17-219, § 5008, 55 DCR 7598.)

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

D.C. Law 16-100, in par. (a)(2), substituted “company,” for “company”; in subpar. (a)(4)(H), substituted “Department of Motor Vehicles;” for “Department of Public Works, Bureau of Motor Vehicle Services;”; in subsec. (b), substituted “, except that the IV-D agency shall provide notice of withholding to the obligor only as required pursuant to § 46-209.” for “a period at the end”; in subsec. (c), added “This subsection shall not apply to IV-D agency actions related to the withholding of earnings or other income under this subchapter.” to the end; in subsec. (e), deleted “Family Division of the Superior” and “Superior” preceding “Court”; in subsec. (f), deleted “Superior” preceding “Court”; and amended par. (a)(6), which had read as follows: “(6) Order income withholding, including the amount of periodic support payments and any additional amount for overdue support payments;”

D.C. Law 16-191, in subsec. (f), validated a previously made technical correction.

D.C. Law 17-219, in subsec. (c), deleted “, except that judicial review shall be in the Superior Court” following “respectively”.

Temporary Amendment of Section. — Section 3(cc) of D.C. Law 16-42, in subsec. (a)(2), inserted a comma after “company”; in subsec. (a)(4)(H), substituted “Department of Motor Vehicles;” for “Department of Public Works, Bureau of Motor Vehicle Services;”; in subsec. (b), substituted “, except that the IV-D agency shall provide notice of withholding to the obligor only as required pursuant to section 10.” for the period at the end; in subsec. (c), added “This subsection shall not apply to IV-D agency actions related to the withholding of earnings or other income under this act” to the end; in subsec. (e), deleted “Family Division of the Superior” in the first sentence, deleted “Superior” wherever it appears in the third sentence; in subsec. (f) deleted “Superior” wherever it appears; and rewrote subsec. (a)(6) to read as follows:

“(6) Order income withholding, including the amount of periodic support payments and any additional amount for health insurance coverage, medical support, overdue support pay-

ments, and other costs or fees required under a support order;”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(cc) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(cc) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of

2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 46-202.01.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Short title. — Short title: Section 5007 of D.C. Law 17-219 provided that subtitle D of title V of the act may be cited as the “Child Support Expedited Processes Amendment Act of 2008”.

§ 46-226.04. Recognition and enforcement of authority of other state IV-D agencies.

Except as otherwise provided in this subchapter, the IV-D agency shall recognize and enforce the authority of a IV-D agency in another state to take the actions specified in § 46-226.03(a) if those actions were taken in accordance with the laws and procedures of the other state.

(Feb. 24, 1987, D.C. Law 6-166, § 27d, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance

Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section,

see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare

Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-226.05. Access to locate systems.

The IV-D agency shall develop procedures to ensure that all federal and state agencies engaged in child support enforcement activities under title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.) have access to any system used by the District to locate an individual for purposes related to motor vehicles or law enforcement.

(Feb. 24, 1987, D.C. Law 6-166, § 27e, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amend-

ment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare

Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-226.06. Directory of New Hires.

(a) The Mayor shall establish and maintain a District of Columbia Directory of New Hires, which shall contain information supplied in accordance with subsection (b) of this section.

(b) Except as specified in subsections (e), (f), and (g) of this section, within 20 days of the date an employee begins employment in the District of Columbia, or is rehired, the employer shall supply the following information to the District of Columbia Directory of New Hires:

- (1) Name of the employee;
- (2) Address of the employee;
- (3) Social security number of the employee;
- (4) Name of the employer;
- (5) Address of the employer; and

(6) Employer identification number issued to the employer under section 6109 of the Internal Revenue Code of 1986, approved October 22, 1986 (75 Stat. 828; 26 U.S.C. § 6109).

(c) An employer may, at the employer's option, supply the following information to the District of Columbia Directory of New Hires:

- (1) Name of an employer contact person;
- (2) Telephone number of an employer contact person;
- (3) Availability of medical insurance coverage for the employee and the date on which the employee became or will become eligible for the coverage, if appropriate;
- (4) Date of birth of the employee;
- (5) Date of hire of the employee, defined as the first day that the employee performed services for compensation; and
- (6) Employee's salary, wages, or other compensation.

(d) Each report required by subsection (b) of this section shall be:

- (1) Made on a Internal Revenue Service W-4 form, or, at the option of the employer, an equivalent form;
- (2) Transmitted by first-class mail, magnetically or electronically;
- (3) Entered into the data base of the District of Columbia Directory of New Hires within 5 business days of receipt of the report from the employer; and

(4) Forwarded by the IV-D agency to the National Directory of New Hires within 3 business days of entry of the information under paragraph (3) of this subsection.

(e) An employer that transmits reports to the District of Columbia Directory of New Hires magnetically or electronically may transmit reports in up to 2 monthly transmissions, not less than 12 days nor more than 16 days apart.

(f) Within 2 business days after the date a report under subsection (b) of this section is entered into the District of Columbia Directory of New Hires, the IV-D agency shall transmit an order to withhold to the employer in accordance with this subchapter, unless the employee's income is not subject to withholding.

(g) An employer that has employees in the District and in at least one other state and transmits reports magnetically or electronically may comply with subsection (b) of this section by designating either the District or a state in which the employer has employees and transmitting reports on new hires only to the District or that state. Any employer transmitting reports pursuant to this subsection shall provide the United States Department of Health and Human Services with written notice of the jurisdiction the employer has designated.

(h) Any department, agency, or instrumentality of the United States shall comply with this section to the extent permitted by section 453A(b)(1)(C) of the Social Security Act, approved August 22, 1996 (110 Stat. 2216; 42 U.S.C. § 653(i)).

(i) An employer who fails to comply with this section shall be subject to a civil penalty of \$25 for each employee with respect to whom the employer failed to comply or the employer shall be subject to a civil penalty of \$500 for each employee with respect to whom the employer failed to comply if the noncompliance was the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report. The employer shall be penalized each calendar month until the employer complies. Penalties pursuant to this subsection shall be enforced in the Court by the Attorney General for the District of Columbia.

(j) The Mayor may contract for services to carry out this section.

(k) The Mayor shall promulgate rules pursuant to subchapter I of Chapter 5 of Title 2, to implement the provisions of this section, including establishment of a procedure for an employer to challenge the imposition of a civil penalty pursuant to subsection (i) of this section, with a right to appeal the decision to the Court in accordance with the manner and standards for appeals as set forth in § 2-510.

(l) For purposes of this section, the term:

(1) "Employee" means a person who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 455; 26 U.S.C. § 3401 et. seq), but does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(2) "Employer" has the meaning given to the term in section 3401(d) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 457; 26 U.S.C. § 3401(d)), and includes any governmental entity and any labor

organization, as defined under section 2(5) of the National Labor Relations Act, approved July 5, 1935 (49 Stat. 450; 29 U.S.C. § 152(5)), including a hiring hall.

(3) "New hire" means an employee for whom an employer is required to complete a new Internal Revenue Service W-4 form.

(m) Information collected for the District of Columbia Directory of New Hires may be used by a federal agency, a state or District agency, or a private entity under contract with a government agency to:

- (1) Establish paternity;
- (2) Establish, modify, and enforce a support order;
- (3) Administer worker's compensation and unemployment insurance programs; and
- (4) Verify eligibility for public assistance programs.

(Feb. 24, 1987, D.C. Law 6-166, § 27f, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270; Dec. 7, 2004, D.C. Law 15-205, § 3403(r), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 71, 52 DCR 2638; May 12, 2006, D.C. Law 16-100, § 3(cc), 53 DCR 1886; Mar. 3, 2007, D.C. Law 16-191, § 48(g), 54 DCR 6794.)

Effect of amendments. — D.C. Law 15-205, in subsec. (f), substituted "Court" for "IV-D agency".

D.C. Law 15-354 substituted "Attorney General for the District of Columbia" for "Corporation Counsel".

D.C. Law 16-100, in subsecs. (i) and (k), deleted "Superior" preceding "Court"; and rewrote subsec. (f), which had read as follows: "(f) Within 2 business days after the date a report under subsection (b) of this section is entered into the District of Columbia Directory of New Hires, the Court shall transmit a notice to the employer of the employee directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) support obligation (including any past due support obligation of the employee) unless the employee's income is not subject to withholding."

D.C. Law 16-191, in subsec. (f), validated a previously made technical correction.

Temporary Amendment of Section. — Section 3(dd) of D.C. Law 16-42, in subsec. (i), added "of the District of Columbia" after "Superior Court"; and rewrote subsec. (f) to read as follows:

"(f) Within 2 business days after the date a report under subsection (b) of this section is entered into the District of Columbia Directory of New Hires, the IV-D agency shall transmit an order to withhold to the employer in accordance with this act, unless the employee's income is not subject to withholding."

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3403(r) of Fiscal Year 2005 Budget

Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 3403(r) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 3(dd) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(dd) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 46-202.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 46-226.03.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 46-202.01.

§ 46-226.07. Administrative enforcement in interstate cases.

(a) The IV-D agency shall respond within 5 business days to a request made by another state to enforce a support order.

(b) The IV-D agency may request the child support agency of a state or jurisdiction outside of the District of Columbia established pursuant to title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 *et seq.*) to enforce a support order entered in the District of Columbia or in another state or jurisdiction through high-volume automated administrative enforcement. The request shall include sufficient information to enable the jurisdiction to which the request is transmitted to compare the information about the case to the information in that jurisdiction's database.

(c) A request by the IV-D agency to another jurisdiction under subsection (b) of this section or a request to the IV-D agency under subsection (a) of this section shall constitute a certification by the requesting jurisdiction of the amount of arrears accrued under the support order. The request shall also constitute a certification that the requesting jurisdiction has complied with all procedural due process requirements that apply to the case.

(d) The IV-D agency shall maintain records of the number of requests received under this section and the number of cases for which the IV-D agency collected support in response to the requests and the amount collected.

(e) If a jurisdiction provides assistance to another jurisdiction pursuant to this section, neither jurisdiction shall consider the case to be transferred to the case load of the other jurisdiction.

(f) The IV-D agency shall use high-volume automated administrative en-

forcement, to the same extent as used for intra-state cases, in response to a request made by another state to enforce a support order, and shall promptly report the results of the enforcement procedures to the requesting state. The term “high-volume automated administrative enforcement”, as used in this section, means the use of automated data processing to search various data bases to determine whether information is available regarding a parent who owes a child support obligation.

(Feb. 24, 1987, D.C. Law 6-166, § 27g, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(dd), 53 DCR 1886.)

Effect of amendments. — D.C. Law 16-100, in subsec. (a), deleted “For the purposes of this section, the term ‘business day’ means a day on which District government offices are open for regular business.”

Temporary Amendment of Section. — Section 3(ee) of D.C. Law 16-42, in subsec. (a), deleted “For the purposes of this section, the term ‘business day’ means a day on which District government offices are open for regular business.”

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of

1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(ee) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(ee) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-226.08. **Fraudulent transfers.**

Whenever the IV-D agency knows of a transfer by a support judgment debtor pursuant to Chapter 31 of Title 28, for which a prima facie case is established, the IV-D agency shall seek to void the transfer or obtain a settlement in the best interest of the support creditor.

(Feb. 24, 1987, D.C. Law 6-166, § 27h, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare

Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-226.09. **Court ordered work requirements.**

Whenever an individual owes past-due support for a child receiving public assistance, the IV-D agency may request the court to issue an order that requires the individual to pay support in accordance with a plan approved by the Court, or, if the individual is subject to such a plan and is not incapacitated, to participate in such work activities as defined in section 407(d) of the Social

Security Act, approved August 22, 1996 (110 Stat. 2133; 42 U.S.C. § 407(d)), as the court or the IV-D agency deems appropriate.

(Feb. 24, 1987, D.C. Law 6-166, § 27i, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270; May 12, 2006, D.C. Law 16-100, § 3(ee), 53 DCR 1886.)

Effect of amendments. — D.C. Law 16-100 substituted “public assistance” for “assistance under TANF”; and deleted “Superior” preceding “Court”.

Temporary Amendment of Section. — Section 3(ff) of D.C. Law 16-42 substituted “public assistance” for “assistance under TANF”; and deleted “Superior”.

Section 5(b) of D.C. Law 16-42 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment

Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

For temporary (90 day) amendment of section, see § 3(ff) of Income Withholding Transfer and Revision Emergency Amendment Act of 2005 (D.C. Act 16-167, July 26, 2005, 52 DCR 7648).

For temporary (90 day) amendment of section, see § 3(ff) of Income Withholding Transfer and Revision Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-200, November 17, 2005, 52 DCR 10490).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Legislative history of Law 16-100. — For Law 16-100, see notes following § 46-201.

§ 46-226.10. Automated procedures.

The IV-D agency shall have in operation a single, District-wide automated

data processing and information retrieval system that has the capability to perform the tasks specified by title IV, part D of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.) and shall use this system to the maximum extent feasible to implement the expedited procedures required by that act.

(Feb. 24, 1987, D.C. Law 6-166, § 27j, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare

Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-226.11. Jurisdiction.

The IV-D agency and any administrative or judicial tribunal with authority to hear child support and paternity cases shall exert District-wide jurisdiction over the parties.

(Feb. 24, 1987, D.C. Law 6-166, § 27k, as added Apr. 3, 2001, D.C. Law 13-269, § 108(z), 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7(y) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) addition of section, see § 107(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 7(o) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(y) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(y) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(y) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare

Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90-day) addition of section, see § 107(z) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of this section, see § 107(z) of the Child Support and Welfare Reform Compliance Emergency Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 108(z) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-227. Rulemaking authority.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this subchapter and the Child Support and Welfare Reform Compliance Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-269; 48 DCR 1270).

(Feb. 24, 1987, D.C. Law 6-166, § 28, 33 DCR 6710; Apr. 3, 2001, D.C. Law 13-269, § 108(aa), 48 DCR 1270.)

Section references. — This section is referred to in §§ 46-208, 46-305.01, and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-527.

Effect of amendments. — D.C. Law 13-269 rewrote the section which had read:

“The Mayor shall issue proposed rules to implement the provisions of this chapter and attendant federal law within 90 days from February 24, 1987, pursuant to subchapter I of

Chapter 5 of Title 2. The proposed rules shall be submitted to the Council of the District of Columbia (‘Council’) for a 30-day period of review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 30-day review period, the proposed rules shall be deemed approved.”

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 7(z) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 107(aa) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 7(n) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 7(z) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(z) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(z) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(z) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 107(aa) of the Child Support and

Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 107(aa) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 107(aa) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 107(aa) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 108(aa) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

Delegation of authority to the Attorney General of the District of Columbia to Issue Rules pursuant to Section 28 of the District of Columbia Child Support Enforcement Amendment Act of 1985, see Mayor's Order 2007-42, January 19, 2007 (54 DCR 2411).

§ 46-228. Choice of law.

(a) The law and procedures of the jurisdiction in which the obligor is employed shall apply, except with respect to:

(1) When withholding must be implemented; and

(2) The statute of limitations for maintaining an action on arrearages of support payments.

(b) The Court shall apply the statute of limitations for maintaining an action on arrearages of support payments of either this jurisdiction or the jurisdiction that issued the support order, whichever is longer.

(Feb. 24, 1987, D.C. Law 6-166, § 29, 33 DCR 6710.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-528.

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

§ 46-229. Rules of procedure.

The Court shall establish rules of procedure necessary to effectuate the purposes of this subchapter.

(Feb. 24, 1987, D.C. Law 6-166, § 30, 33 DCR 6710.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-529.

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

§ 46-230. Public Information Program.

The Mayor shall ensure that an extensive program of public information detailing the effects of this subchapter is undertaken within 30 calendar days of February 24, 1987.

(Feb. 24, 1987, D.C. Law 6-166, § 31, 33 DCR 6710.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-530.

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Delegation of Authority. — Delegation of authority pursuant to Law 6-166, see Mayor's Order 87-273, December 10, 1987.

§ 46-231. Enforcement.

This subchapter shall not be enforced until 60 calendar days after February 24, 1987.

(Feb. 24, 1987, D.C. Law 6-166, § 32, 33 DCR 6710.)

Section references. — This section is referred to in §§ 46-305.01 and 46-306.05.

Prior Codifications. — 1981 Ed., § 30-531.

Legislative history of Law 6-166. — For legislative history of D.C. Law 6-166, see Historical and Statutory Notes following § 46-201.

Subchapter II. Medical Support Enforcement.

§ 46-251.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Custodian" means the parent, relative, guardian, or other person with whom the dependent child resides.

(2) "Health insurance coverage" means benefits consisting of amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body (provided directly, through insurance or reimbursement, or otherwise, and includes items and services) under any hospital or medical service policy or certificate, hospital, or medical service plan contract, or health maintenance organization contract offered by a health insurer that is available to either parent, under which medical services could be provided to a dependent child.

(3) "Health insurer" means any person that provides one or more health benefit plans or insurance in the District of Columbia, including a group health

plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, approved April 7, 1986 (100 Stat. 231; 29 U.S.C. § 1167(1)), a plan administrator as defined in section 3(16) of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 835; 29 U.S.C. § 1002(16)), an insurer, a hospital and medical service corporation, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of the Department of Insurance and Securities Regulation [Commissioner of Insurance, Securities, and Banking].

(4) "IV-D agency" means the organizational unit of the District of Columbia government, its contractors or assignees, or a successor organizational unit, that is responsible for administering or supervising the administration of the District of Columbia's State Plan under Part D of Title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of support orders.

(5) "Medical support notice" means a notice issued by the IV-D agency that meets the requirements of a National Medical Support Notice promulgated under section 401(b) of the Child Support Performance and Incentive Act of 1998, approved July 16, 1998 (112 Stat. 660; 42 U.S.C. § 651 note).

(6) "Support order" means a judgment, decree, or order, whether temporary or final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

(Mar. 30, 2004, D.C. Law 15-130, § 101, 51 DCR 1615; Mar. 20, 2008, D.C. Law 17-128, § 3(a), 55 DCR 1525.)

Effect of amendments. — D.C. Law 17-128, in par. (2), substituted "health insurer that is available to either parent, under which medical services could be provided to a dependent child" for "health insurer".

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 101 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 101 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 101 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this section, see § 101 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 101 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 101 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — Law 15-130, the "Medical Support Establishment and Enforcement Amendment Act of 2004", was introduced in Council and assigned Bill No. 15-219, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 28, 2004, it was assigned Act No. 15-331 and transmitted to both Houses of Congress for its review. D.C. Law 15-130 became effective on March 30, 2004.

Legislative history of Law 17-128. — Law 17-128, the “Child Support Compliance Amendment Act of 2008”, was introduced in Council

and assigned Bill No. 17-291 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 29, 2008, it was assigned Act No. 17-277 and transmitted to both Houses of Congress for its review. D.C. Law 17-128 became effective on March 20, 2008.

§ 46-251.02. Use of medical support notice; IV-D agency.

(a) In cases being enforced pursuant to Part D of Title IV of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), where a parent is required by a support order to provide health insurance coverage for a child, which is available through the parent’s employer, the IV-D agency may apply for the enrollment of the child in the health insurance coverage by submitting a medical support notice to the employer. The IV-D agency shall, where appropriate, submit a medical support notice to the employer when the support order requires the noncustodial parent to provide health insurance coverage for the child and the employer is known to the IV-D agency, unless the support order directs enrollment of the child in alternative coverage.

(b) Where a noncustodial parent is a newly hired employee entered in the District of Columbia Directory of New Hires pursuant to § 46-226.06, and the support order requires the noncustodial parent to provide health insurance coverage for a child, the IV-D agency shall submit the medical support notice to the employer within 2 business days after the entry of the employee in the directory.

(c) The IV-D agency shall promptly notify an employer that has received a medical support notice when there is no longer a support order in effect for which the IV-D agency is responsible that requires a parent to provide health insurance coverage for a child.

(Mar. 30, 2004, D.C. Law 15-130, § 102, 51 DCR 1615.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 102 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 102 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 102 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 102 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 102 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 102 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

§ 46-251.03. Medical support notice; contents; effect.

(a) A medical support notice shall be issued in a format consistent with federal requirements and shall contain all information required by federal law. A medical support notice shall:

(1) Conform with the requirements applicable to medical child support orders under section 609(a) of the Employee Retirement Income Security Act of 1974, approved August 10, 1993 (107 Stat. 371; 29 U.S.C. § 1169(a)), in connection with group health plans;

(2) Conform with the requirements of section 466(a)(19) of the Social Security Act, approved August 16, 1984 (98 Stat. 1306; 42 U.S.C. § 666(a)(19));

(3) Include a separate and easily severable employer withholding notice that informs the employer of:

(A) The employer's obligations under § 46-251.07 to withhold employee contributions due in connection with health insurance coverage a parent is required to provide for a child pursuant to a support order;

(B) The duration of the withholding requirement as stated in § 1-307.42(3);

(C) The applicability of the limits on withholding imposed under section 303 (b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b));

(D) The applicability of any prioritization required under § 46-251.08 when the employee's earnings are insufficient to satisfy fully through withholding the employee's obligations to provide cash support and contributions for health insurance coverage for the child;

(E) The name and telephone number of the appropriate person to contact at the IV-D agency about the medical support notice;

(F) The employee's right to contest the withholding based on mistake of fact pursuant to § 46-251.09, and the employer's obligation to initiate and continue the withholding until the employer receives notice that the contest is resolved; and

(G) The applicability of sanctions against the employer under § 46-251.10 for discharging, refusing to employ, or taking disciplinary action against a parent because of the requirement to withhold employee contributions for health insurance coverage, or for failing to withhold or remit earnings.

(b) An appropriately completed medical support notice that meets the requirements of section 401(b) of the Child Support Performance and Incentive Act of 1998, approved July 16, 1998 (112 Stat. 663; 42 U.S.C. § 651 note), shall be deemed to be a qualified medical child support order under section 609(a)(2) of the Employee Retirement Income Security Act of 1974, approved August 10, 1993 (107 Stat. 371; 29 U.S.C. § 1169(a)(2)).

(c) A medical support notice issued in another jurisdiction shall be treated under this subchapter in the same manner as a medical support notice issued in the District of Columbia.

(Mar. 30, 2004, D.C. Law 15-130, § 103, 51 DCR 1615.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 103 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 103 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 103 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 103 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 103 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 103 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

§ 46-251.04. Duties of the employer.

(a) Upon receipt of a medical support notice, an employer shall, within 20 business days after the date of the medical support notice:

(1) Determine whether health insurance coverage is available to the child included in the medical support notice based on the parent's employment status;

(2) Complete and return to the IV-D agency the applicable portion of the medical support notice if health insurance coverage is unavailable to the child based on the parent's employment status; and

(3) Send the medical support notice, excluding the severable employer withholding notice, to each health insurer that provides health insurance coverage for which the child may be eligible, if health insurance coverage is available to the child based on the parent's employment status.

(b) If the employer determines that the child cannot be enrolled in health insurance coverage because the employee contributions exceed the amount that may be withheld from the parent's earnings due to federal or District of Columbia withholding limitations or prioritizations, the employer shall promptly complete and send to the IV-D agency the applicable portion of the medical support notice.

(c) If the employer receives notice from a health insurer that the parent is subject to a waiting period that expires more than 90 days from the health insurer's receipt of the medical support notice, or that has a duration determined by a measure other than the passage of time, the employer shall inform the health insurer, when the parent is eligible to enroll in health insurance coverage, that the parent is eligible and that the medical support notice requires the enrollment of the child.

(d) Within 10 days after an employer receives notice that a parent subject to a medical support notice will terminate employment, or within 10 days after the termination, whichever occurs earlier, the employer shall notify the IV-D agency of the termination and provide the IV-D agency with the last known address and the name and address of the parent's new employer, if known.

(Mar. 30, 2004, D.C. Law 15-130, § 104, 51 DCR 1615.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 104 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 104 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 104 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 104 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 104 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 104 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

§ 46-251.05. Duties of the health insurer.

(a) Upon receipt of a medical support notice from an employer, a health insurer shall, within 40 business days after the date of the notice:

(1) Determine whether the medical support notice contains:

(A) The employee's name and mailing address; and

(B) The name of the child to be enrolled in health insurance coverage and the mailing address of the child or a substituted official; and

(2)(A) Complete and send to the IV-D agency and the employer the applicable portion of the medical support notice if the medical support notice does not contain the information described in paragraph (1) of this subsection; or

(B) Comply with the following requirements, subject to subsections (c), (d), and (e) of this section, if the medical support notice contains the information described in paragraph (1) of this subsection:

(i) Determine the child's eligibility for enrollment in health insurance coverage;

(ii) Enroll the child in health insurance coverage if the child is eligible for enrollment and not already enrolled, without regard to enrollment season restrictions;

(iii) Enroll the child and the employee in health insurance coverage if the employee is not enrolled and the health insurance plan requires the employee's enrollment for the child to be eligible;

(iv) Complete and send to the IV-D agency and the employer the applicable portion of the medical support notice;

(v) Send the parent, the child's custodian, and the child a written notification that health insurance coverage is or will become available to the child; and

(vi) Send the child's custodian a written description of the available health insurance coverage, the effective date of the health insurance coverage, summary plan descriptions, and, if not already provided, forms, documents, or other information necessary to obtain health insurance coverage for the child and to submit claims for benefits.

(b) Notification to the child's custodian of the availability of health insur-

ance coverage pursuant to subsection (a)(3)(E) [sic] of this section shall be deemed to be notification to the child if the child resides at the same address.

(c) If enrollment of a child in health insurance coverage is subject to a waiting period that has not been completed, within 40 business days after the date of the medical support notice the health insurer shall complete and send to the employer, the IV-D agency, and both parents the applicable portion of the medical support notice. Within 20 business days after the employee's completion of the waiting period, the health insurer shall comply with the requirements of subsection (a)(3) [sic] of this section.

(d) If a child is eligible for enrollment in more than one health insurance coverage option available through the employer, the health insurer shall, within 40 business days after the date of the medical support notice:

(1) Complete and send to the IV-D agency and the employer the applicable portion of the medical support notice; and

(2) Send the IV-D agency copies of applicable summary plan descriptions or other documents that describe the available coverage, including any additional employee contributions necessary to obtain coverage for the child under each option, and any applicable service area limitations for each option.

(e) Within 20 business days after the health insurer sends to the IV-D agency the information stated in subsection (d) of this section, the health insurer shall

(1) Enroll the child in the health insurance coverage option selected by the IV-D agency, and comply with the other requirements of subsection (a)(3) [sic] of this section, if the IV-D agency has notified the health insurer of its selection; or

(2) Enroll the child in any default option for which the child is eligible, and comply with the other requirements of subsection (a)(3) [sic] of this section, if the IV-D agency has not notified the health insurer of its selection of a different option.

(Mar. 30, 2004, D.C. Law 15-130, § 105, 51 DCR 1615; Apr. 13, 2005, D.C. Law 15-354, § 78, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354, in subsec. (a)(2)(B), substituted “subsections” for “paragraphs”.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 105 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2371).

For temporary (225 day) addition of section, see § 105 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 105 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this section, see § 105 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 105 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 105 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 46-226.03.

§ 46-251.06. Selection of a health insurance coverage option.

(a) Upon receipt of notice from a health insurer that more than one health insurance coverage option is available for a child included in a medical support notice, the IV-D agency shall select an available option in consultation with the child's custodian.

(b) In selecting an option in consultation with the child's custodian pursuant to subsection (a) of this section, the IV-D agency shall consider, at a minimum, the cost, comprehensiveness, and accessibility of the health insurance coverage. For the purposes of this section, health insurance coverage shall be considered accessible if, based on the work history of the parent providing the coverage, it will be available for at least one year, and if the child lives within the geographic area covered by the plan or within 30 minutes or 30 miles of primary care services.

(c) The IV-D agency shall notify the health insurer of its selection promptly after the health insurer provides the IV-D agency with the information required under § 46-251.05(d).

(Mar. 30, 2004, D.C. Law 15-130, § 106, 51 DCR 1615; Mar. 20, 2008, D.C. Law 17-128, § 3(b), 55 DCR 1525.)

Effect of amendments. — D.C. Law 17-128 rewrote subsec. (b), which had read as follows: "(b) In selecting an option in consultation with the child's custodian pursuant to subsection (a) of this section, the IV-D agency shall consider, at a minimum, the cost, comprehensiveness, accessibility, and continuing availability of the health insurance coverage."

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 106 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 106 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 106 of Medical Support Establishment and Enforcement

Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this section, see § 106 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 106 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 106 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

Legislative history of Law 17-128. — For Law 17-128, see notes following § 46-251.01.

§ 46-251.07. Withholding for health insurance coverage.

(a) When an employer receives notice from a health insurer that a child has been enrolled in health insurance coverage pursuant to a medical support notice or a support order requiring a parent to provide health insurance coverage, the employer shall:

(1) Withhold from the employee's earnings the employee contributions required to effectuate health insurance coverage for the child in each plan in which the child is enrolled;

(2) Send the amount withheld to the applicable health insurer within 7 business days after the date the amount would have been next paid or credited to the employee;

(3) Continue to withhold premiums for health insurance coverage from the employee's earnings on a regular and consistent basis and pay the premiums to the health insurer; and

(4) Send each additional payment to the health insurer on the same date that the employee is compensated.

(b) Withholding for health insurance coverage shall not exceed the limitations set forth in § 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

(c) Nothing in this subchapter shall alter the obligation of an obligor, obligee, employer, or other person or entity to comply with the provisions for the withholding of earnings or other income stated in subchapter I of Chapter 2 of this title.

(Mar. 30, 2004, D.C. Law 15-130, § 107, 51 DCR 1615.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 107 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 107 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 107 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 107 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 107 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 107 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

§ 46-251.08. Priority of withholding for employee contributions to health insurance coverage.

(a) If there are insufficient funds available within the limits of section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)), to meet the employee's contribution necessary for the coverage of each child included in a support order and to comply with a notice or order to withhold received pursuant to § 46-212, the employer shall allocate the funds available according to the following priority, unless the court directs otherwise:

- (1) Current child and spousal support;
- (2) Health insurance premiums or current cash medical support;
- (3) Arrearages for current support and current cash medical support; and
- (4) Other child support obligations.

(b) If an employer is required to withhold earnings or employee contributions for health insurance coverage pursuant to more than one support order,

the employer shall prorate among the support orders subject to withholding the amount of the employee's earnings that are available for withholding within the limits of section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)), and determine whether the available earnings are sufficient to satisfy current cash support due under all applicable support orders. The employer shall not withhold contributions for health insurance coverage required under any support order until all the employee's current cash support obligations are satisfied. The employer shall fully satisfy each priority level stated in subsection (a) of this section for all of the employee's support orders before applying payments to an obligation with a lesser priority.

(c) An employer shall apply the law of the employee's principal place of employment in determining the limitations and priorities applicable to the withholding of employee contributions for health insurance coverage.

(Mar. 30, 2004, D.C. Law 15-130, § 108, 51 DCR 1615; Mar. 20, 2008, D.C. Law 17-128, § 3(c), 55 DCR 1525.)

Effect of amendments. — D.C. Law 17-128 rewrote the section.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 108 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 108 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 108 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 108 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 108 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 108 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

Legislative history of Law 17-128. — For Law 17-128, see notes following § 46-251.01.

§ 46-251.09. Liability for contributions to health insurance coverage; objections to withholding.

(a) An employee is liable for employee contributions required to enroll a child in health insurance coverage pursuant to a medical support notice or a support order, except that an employee may contest a withholding for employee contributions for health insurance coverage based on a mistake of fact.

(b) An employee may contest a withholding for employee contributions for health insurance coverage by filing a motion to quash the withholding with the Superior Court of the District of Columbia, with service upon the IV-D agency if the withholding was commenced pursuant to a medical support notice. The employee shall file the motion within 15 days after the date the first employee contributions for health insurance coverage are withheld from the employee's earnings.

(c) The only grounds for contesting a withholding based on a mistake of fact under this section are:

- (1) The identity of the employee;
- (2) The accuracy of the amount of the employee contributions withheld to enroll the child in the health insurance coverage;
- (3) The existence of an underlying support order requiring the employee to provide health insurance coverage for the child; and
- (4) Whether the amount withheld for health insurance coverage exceeds the limits of section 303(b) of the Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 163; 15 U.S.C. § 1673(b)).

(d) Enrollment of a child in health insurance coverage and withholding of the employee's contributions for health insurance coverage shall not be stayed or terminated until the employer receives written notice that the contest has been resolved in the employee's favor.

(e) Nothing in this section shall be construed to limit an employee's right to contest an underlying support order requiring the employee to provide health insurance coverage for a child.

(Mar. 30, 2004, D.C. Law 15-130, § 109, 51 DCR 1615.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 109 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 109 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 109 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 109 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 109 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 109 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

§ 46-251.10. Sanctions; limitations on liability.

(a) An employer shall not discharge, refuse to employ, or take disciplinary action against a parent or employee based on the parent or employee's obligation to provide health insurance coverage for a child under a medical support notice or a support order.

(b) There shall be a rebuttable presumption that an employer who engages in conduct described in subsection (a) of this section, within 90 days from the date of receipt of the medical support notice or the support order, is in violation of this section and may be subject to the sanctions in subsection (c) of this section.

(c) Any employer who engages in conduct described in subsection (a) of this section shall be subject to a civil penalty of up to \$10,000. An employee, a parent, or the IV-D agency may bring a civil action against an employer who

violates subsection (a) of this section. A civil penalty obtained under this section shall be used to offset the employee's duty of support.

(d) If an employer fails to withhold an employee contribution for health insurance coverage or fails to send a withheld contribution to the health insurer as required by § 46-251.08, a judgment shall be entered against the employer for the amount not withheld or paid to the health insurer, and for any reasonable counsel fees and court costs incurred by the employee, a parent, the health insurer, or the IV-D agency as a result of the failure to withhold or make payment.

(e) An employer shall be liable for unreimbursed health care expenses incurred by or on behalf of a child as a result of the employer's failure to comply with the requirements of this subchapter or § 1-307.42.

(f) A health insurer shall be liable for unreimbursed health care expenses incurred by or on behalf of a child as a result of the health insurer's failure to comply with the requirements of this subchapter or § 1-307.41.

(g) Neither an employer nor a health insurer shall be subject to liability under subsections (d), (e), or (f) of this section if the employer or health insurer proves by a preponderance of the evidence that the failure to comply was due to exigent circumstances beyond the control of the employer or health insurer.

(h) Neither an employer nor a health insurer who complies, in accordance with the requirements of this subchapter, with a medical support notice or a support order that is regular on its face shall be subject to civil liability to an individual or entity for conduct in compliance with the medical support notice or support order.

(Mar. 30, 2004, D.C. Law 15-130, § 110, 51 DCR 1615.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 110 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2002 (D.C. Law 14-238, March 25, 2003, law notification 50 DCR 2751).

For temporary (225 day) addition of section, see § 110 of Medical Support Establishment and Enforcement Temporary Amendment Act of 2003 (D.C. Law 15-84, March 10, 2004, law notification 51 DCR 3376).

Emergency legislation. — For temporary (90 day) addition of this section, see § 110 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2002 (D.C. Act 14-485, October 3, 2002, 49 DCR 9631).

For temporary (90 day) addition of this sec-

tion, see § 110 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-600, January 7, 2003, 50 DCR 664).

For temporary (90 day) addition of this section, see § 110 of Medical Support Establishment and Enforcement Emergency Amendment Act of 2003 (D.C. Act 15-208, October 24, 2003, 50 DCR 9856).

For temporary (90 day) addition of this section, see § 110 of Medical Support Establishment and Enforcement Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-330, January 28, 2004, 51 DCR 1603).

Legislative history of Law 15-130. — For D.C. Law 15-130, see notes following § 46-251.01.

INTERSTATE FAMILY SUPPORT

CHAPTER 3. INTERSTATE FAMILY SUPPORT.

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Subchapter VI. Registration, Enforcement, and Modification of Support Order

PART A

Registration and Enforcement of Support Order

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Subchapter I. General Provisions.

§ 46-301.01. Definitions.

For the purposes of this chapter, the term:

(1) “Child” means an individual, whether over or under the age of majority, who is, or is alleged to be, owed a duty of support by the individual’s parent or who is, or is alleged to be, the beneficiary of a support order directed to the parent.

(2) “Child support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) “District” means the District of Columbia.

(4) “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) “Family Division” means the Family Division of the Superior Court of the District of Columbia.

(6) “Home state” means the state in which a child lived with a parent, or a person acting as parent, for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support, and, if a child is less than 6 months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month or other period.

(7) “Income” includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the District.

(8) “Income-withholding order” means an order or other legal process directed to an obligor’s employer or other holder, as defined in § 46-201(9) [now § 46-201(11)], to withhold support from the income of the obligor.

(9) “Initiating state” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter.

(10) “Initiating tribunal” means the authorized tribunal in an initiating state.

(11) “Issuing state” means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(12) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(13) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(14) "Mayor" means the Mayor of the District of Columbia.

(15) "Obligee" means:

(A) An individual to whom a duty of support is, or is alleged to be, owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(B) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(C) An individual seeking a judgment determining parentage of the individual's child.

(16) "Obligor" means an individual, or the estate of a decedent:

(A) Who owes, or is alleged to owe, a duty of support;

(B) Who is alleged, but has not been adjudicated, to be a parent of a child; or

(C) Who is liable under a support order.

(16A) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(16B) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) "Register" means to file a support order or judgment determining parentage in the Family Division.

(18) "Registering tribunal" means a tribunal in which a support order is registered.

(19) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter.

(20) "Responding tribunal" means the authorized tribunal in a responding state.

(21) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(22) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes:

(A) An Indian tribe; and

(B) A foreign country or political subdivision that:

(i) Has been declared to be a foreign reciprocating country or political subdivision under federal law;

(ii) Has established a reciprocal arrangement for child support with the District, as provided in § 46-303.08(b); or

(iii) Has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

(23) "Support enforcement agency" means a public official or agency authorized to seek:

(A) Enforcement of support orders or laws relating to the duty of support;

(B) Establishment or modification of child support;

(C) Determination of parentage;

(D) Location of obligors or their assets; or

(E) Determination of the controlling child-support order.

(24) "Support order" means a judgment, decree, order, or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

(25) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

(Feb. 9, 1996, D.C. Law 11-81, § 101, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(a), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(a)(1), 53 DCR 3634.)

Cross references. — Uniform child custody jurisdiction and marital or parent and child long-arm jurisdiction, see § 16-4601.01 et seq.

Prior Codifications. — 1981 Ed., § 30-341.1.

Effect of amendments. — D.C. Law 16-137, in par. (9), deleted ", the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act" following "this chapter"; added pars. (16A) and (16B); in par. (19), deleted ", the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act" following "this chapter"; And rewrote subpar. (22)(B) and pars. (23) and (24).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(a) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-510, March 20, 1998, 46 DCR 1950).

Legislative history of Law 11-81. — Law 11-81, the "Uniform Interstate Family Support Act of 1995," was introduced in Council and assigned Bill No. 11-169, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-157 and transmitted to both Houses of Congress for its review. D.C. Law 11-81 became effective on February 9, 1996.

Legislative history of Law 12-131. — Law 12-131, the "Uniform Interstate Family Support Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-156, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-330 and transmitted to both Houses of Congress for its review. D.C. Law 12-131 became effective on July 24, 1998.

Legislative history of Law 16-137. — Law 16-137, the "Uniform Family Support Amendment Act of 2006," was introduced in Council and assigned Bill No. 16-151 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 7, 2006, and April 4, 2006, respectively. Signed by the Mayor on April 26, 2006, it

was assigned Act No. 16-366 and transmitted to both Houses of Congress for its review. D.C. Law 16-137 became effective on June 22, 2006.

Editor's notes. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Uniform Law: This section is based upon § 102 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

ANALYSIS

Duty to make determination.
Duty to support.
Foreign divorces or support orders.
In general.
Jurisdiction.
Law governing.
Persons in loco parentis.
Right to and collection of arrears.
Separation agreements.
Service by publication.
Timing of motion to vacate.

Duty to make determination.

A judge seeking to determine the meaning of a child support order registered under the Uniform Interstate Family Support Act (UIFSA) should ordinarily conduct a thorough inquiry, including if necessary some communication with the issuing jurisdiction. *Liuksila v. Stoll*, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

Although mother had removed herself and child from jurisdiction of court to California, trial court should have proceeded to determine child's support petition on its merits rather than dismissing rule to show cause, where there was no specific finding that mother was in contempt or had trifled with court, nor was child residing in a foreign country beyond reach of court, and reciprocal support enforcement statute, placing specific responsibility on courts of District of Columbia to hear and determine petition, obviated necessity of child and mother appearing personally to pursue support action. D.C. Code §§ 30-301 et seq., 30-309, 30-314, 30-315. *Norton v. Norton*, 298 A.2d 514, 1972 D.C. App. LEXIS 314 (1972).

Duty to support.

Basis for a Uniform Reciprocal Enforcement of Support Act petition is not a prior judgment, but the existence of a duty to support on part of respondent. D.C. Code §§ 30-301 et seq., 30-303. *Schlecht v. Schlecht*, 387 A.2d 575, 1978 D.C. App. LEXIS 463 (1978).

Welfare of child should not be prejudiced by delictum of a parent, and mother's misconduct toward father, even if it consists of impeding his visitation rights, does not justify father's failure to support his child. D.C. Code §§ 30-301 et seq., 30-309, 30-314, 30-315. *Norton v. Norton*,

298 A.2d 514, 1972 D.C. App. LEXIS 314 (1972).

Under Uniform Reciprocal Enforcement of Support Act, enforceable duties of support include those imposed or impossible under laws of any state where alleged obligor was present during period for which support was sought. D.C. Code 1961, § 30-304; *Comp.Laws Supp.Mich.1961*, § 750.158. *Howze v. Howze*, 225 A.2d 477, 1967 D.C. App. LEXIS 116 (App. 1967), appeal dismissed by 385 F.2d 986, 128 U.S. App. D.C. 204, 1967 U.S. App. LEXIS 4614 (1967).

A foreign support order may give rise to a duty of support, but does not compel a responding state to award the same level of support. *Nix v. Watson*, 120 WLR 653 (Super. Ct. 1991).

When emancipation of a child is based upon some condition other than the age of majority, e.g., marriage of the child, there is no authority to modify or remit payments that became due after the child was emancipated and before the motion was filed. *Nix v. Watson*, 120 WLR 653 (Super. Ct. 1991).

Foreign divorces or support orders.

Trial court did not abuse its discretion in ruling that adjudicated father had to pay entire amount of his child support arrearages, despite language in document from German Institute for Guardianship (GIG) indicating that he was required to make \$150 per month installment payments on arrears; GIG document was request for relief, not an order, there were two previous German default judgments against adjudicated father, both of which indicated that arrearages were due immediately, and, even though trial court did not seek guidance from German authorities, it sufficiently addressed and resolved issue, given lengthy history of case and adjudicated father's consistent defiance in face of multiple court orders directing him to pay child support and his insistence on bringing meritless appeals. *Liuksila v. Stoll*, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

Issue of whether German government, rather than child's mother, was proper party in child support enforcement proceeding involving adjudicated father was barred on appeal by doctrine of *res judicata*, as Court of Appeals had already ruled in previous appeal that adjudicated father's failure to appeal from prior order

that addressed issue barred him from raising any claim regarding mother's standing. *Liuksila v. Stoll*, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

Adjudicated father waived on appeal of order requiring him to pay his child support arrearages in full issue of whether German court that entered child support order against him had personal jurisdiction over him, as German order had been registered in the District of Columbia pursuant to Uniform Interstate Family Support Act (UIFSA), and adjudicated father had failed to challenge either the jurisdiction of German court or validity of German child support order. *Liuksila v. Stoll*, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

District of Columbia judgment, under Uniform Reciprocal Enforcement of Support Act, requiring husband to make support payments until child reach 18, was not in conflict with doctrines of *res judicata* or full faith and credit regarding Michigan divorce decree which required payments only until age 17. *Comp.Laws. Supp.Mich.1961*, §§ 780.151-780.173; D.C. Code 1961, §§ 30-301 to 30-324. *Howze v. Howze*, 225 A.2d 477, 1967 D.C. App. LEXIS 116 (App. 1967), appeal dismissed by 385 F.2d 986, 128 U.S. App. D.C. 204, 1967 U.S. App. LEXIS 4614 (1967).

Decision determining father's continued liability under judgment previously entered under Uniform Act and requiring support payments until Michigan child should reach 18, would not impair right of mother, who had obtained Michigan divorce, to petition Michigan court for further support under Uniform Act after child reached 18. D.C. Code 1961, §§ 30-301 to 30-324. *Howze v. Howze*, 225 A.2d 477, 1967 D.C. App. LEXIS 116 (App. 1967), appeal dismissed by 385 F.2d 986, 128 U.S. App. D.C. 204, 1967 U.S. App. LEXIS 4614 (1967).

Money judgment was proper means of collecting arrears in payments due under foreign decree for support of child. D.C. Code 1961, §§ 30-301 to 30-324. *Howze v. Howze*, 225 A.2d 477, 1967 D.C. App. LEXIS 116 (App. 1967), appeal dismissed by 385 F.2d 986, 128 U.S. App. D.C. 204, 1967 U.S. App. LEXIS 4614 (1967).

In general.

Uniform Interstate Family Support Act (UIFSA) does not contain a definition of "modification" or "termination;" consequently, the ordinary meanings of the words apply. *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

Jurisdiction.

Trial court had jurisdiction to consider wife's motion to reduce child support arrearages to judgment although court in original divorce action did not undertake to adjudicate any issue as to support or maintenance and final

order was silent as to support and maintenance. D.C. Code 1981, § 30-301 et seq. *Clark v. Clark*, 485 A.2d 621, 1984 D.C. App. LEXIS 578 (1984).

Superior court had jurisdiction to entertain divorced wife's Uniform Reciprocal Enforcement of Support Act petition seeking alimony from him and seeking to recover amounts he had allegedly failed in the past to pay for support of her and their children. D.C. Code §§ 30-301 et seq., 30-303. *Schlecht v. Schlecht*, 387 A.2d 575, 1978 D.C. App. LEXIS 463 (1978).

Law governing.

Evidence supported finding that divorce decree was no longer being relied upon to impose a duty of support on father, where order at issue was granted in response to mother's petition to increase support payments for her child until child reached age 18, and that order, though not specific, was intended to continue at least until child was 17 years, 3 months old, and more likely until her 18th birthday, and, under either view, reliance was clearly placed on District of Columbia support laws and not on 1961 divorce decree which provided for support only until child reached age 17. D.C. Code 1961, § 30-304. *Howze v. Howze*, 385 F.2d 986, 1967 U.S. App. LEXIS 4614 (C.A.D.C. 1967).

Under Uniform Reciprocal Enforcement of Support Act, District of Columbia as responding state was required to make independent determination as to whether father owed duty of support to appellee, and such determination was to be made pursuant to law of any state in which the father was present during period for which support was sought. D.C. Code 1981, §§ 16-916, 30-301 et seq., 30-302(3), 30-304; U.S.C. Const.Amends. 5, 14. *Rittenhouse v. Rittenhouse*, 461 A.2d 465, 1983 D.C. App. LEXIS 371 (1983).

Father brought into proceeding under the Uniform Reciprocal Enforcement of Support Act could not be heard to complain about application of law of jurisdiction in which he was domiciled, i.e., would not be heard to claim that application of District of Columbia law violated his right to equal protection of law and his right to due process of law. D.C. Code 1981, §§ 16-916, 30-302(3), 30-304; U.S. Const.Amends. 5, 14. *Rittenhouse v. Rittenhouse*, 461 A.2d 465, 1983 D.C. App. LEXIS 371 (1983).

Although father was not required to support child beyond the age of 18 under the law of Maryland where the child resided, District of Columbia court, in a proceeding brought under the Uniform Reciprocal Enforcement of Support Act, could order the father to pay support until child reached age 21. D.C. Code 1981, §§ 16-916, 30-301 et seq., 30-304. *Rittenhouse v. Rittenhouse*, 461 A.2d 465, 1983 D.C. App. LEXIS 371 (1983).

When mother's petition in reciprocal enforcement of support proceeding was forwarded to District of Columbia, latter court had to determine under local statute whether father owed duty of support and, if so, amount he should be required to pay. D.C. Code 1961, §§ 11-1601 et seq., 11-1602(e), 11-1604. *Prager v. Smith*, 195 A.2d 257, 1963 D.C. App. LEXIS 310 (App. 1963).

Where District of Columbia Reciprocal Enforcement of Support Act had no section providing that, where District was receiving jurisdiction and respondent controverted petition, judge should stay hearing and transmit to initiating state a transcript of clerk's minutes showing denials entered by respondent, trial judge correctly refused to apply such section of initiating state to proceedings in District. Domestic Relations Law N.Y. §§ 30 et seq., 37, subds. 3, 6, 41; D.C. Code 1961, §§ 11-1601 et seq., 11-1602(e), 11-1604. *Prager v. Smith*, 195 A.2d 257, 1963 D.C. App. LEXIS 310 (App. 1963).

Where father, since leaving Virginia some years before, had continuously resided in the District of Columbia, law of the District of Columbia was controlling in proceeding in the District of Columbia under the Uniform Reciprocal Enforcement of Support Act of the District of Columbia on transmission to the District of Columbia of petition filed by mother under similar act in Virginia to compel support for minor children. D.C. Code 1951, §§ 11-1601 et seq., 11-1604; Municipal Court Rules, § 5, rule 18(b)(1); Code Va.1950, § 20-88.12 et seq. *Edmonds v. Edmonds*, 146 A.2d 774, 1958 D.C. App. LEXIS 346 (Cr.App. 1958).

Provisions of the Uniform Interstate Family Support Act (UIFSA) generally apply in situations where there are multiple child support orders or where more than one tribunal is seeking to exercise jurisdiction; very few UIFSA provisions apply in circumstances where the issuing court is considering its own order in a single support order case. *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

As a remedial statute, the Uniform Interstate Family Support Act (UIFSA) should be interpreted to accomplish its purpose of creating a statutory scheme whereby at any given time only one support was valid and controlling. *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

Under the Uniform Interstate Family Support Act, the Superior Court no longer has authority to modify an existing child support order where neither parent nor the child currently reside in the District of Columbia; however, the court retains authority to determine issues concerning enforcement of that order. *Lackman v. Rosenstock*, 126 WLR 829 (Super. Ct. 1998).

Persons in loco parentis.

Where husband did not intend that in loco

parentis relation should continue during separation as to child of wife by her former marriage, husband was not obliged to provide support for such child. D.C. Code § 30-301 et seq. *Jackson v. Jackson*, 278 A.2d 114, 1971 D.C. App. LEXIS 332 (1971).

Right to and collection of arrears.

Divorced wife, who filed Uniform Reciprocal Enforcement of Support Act petition, was entitled to award for amount which divorced husband should have paid her from date petition was filed to time of her remarriage but could not be awarded any sum for any arrearage in his alimony and child support payments at time petition was filed. D.C. Code § 30-301 et seq. *Schlecht v. Schlecht*, 387 A.2d 575, 1978 D.C. App. LEXIS 463 (1978).

Separation agreements.

Uniform Reciprocal Enforcement of Support Act (URESA) order, requiring father to pay \$563 per month in child support, was limited to determination of current needs of children and did not modify parties' obligations under prior separation agreement incorporated into divorce decree; amounts paid by father pursuant to URESA order must be credited against his obligations under parties' separation agreement. D.C. Code 1981, § 30-301 et seq. *Albus v. Albus*, 503 A.2d 1229, 1986 D.C. App. LEXIS 263 (1986).

Service by publication.

Trial court did not have power to order constructive service by publication in support proceeding under the Uniform Reciprocal Enforcement of Support Act, notwithstanding showing of good cause. D.C. Code 1981, §§ 30-301 to 30-324. *Spevacek v. Wright*, 512 A.2d 1024, 1986 D.C. App. LEXIS 393 (1986).

Statute authorizing service by publication in eight enumerated types of cases did not provide for service by publication in Uniform Reciprocal Enforcement of Support Act cases or in any other kind of support proceeding independent of divorce action or custody action. D.C. Code 1981, §§ 13-336, 30-301 to 30-324. *Spevacek v. Wright*, 512 A.2d 1024, 1986 D.C. App. LEXIS 393 (1986).

Statute empowering court to refer Uniform Reciprocal Enforcement of Support Act cases to corporation counsel, or to private counsel, if appropriate, for such further action as may be necessary to obtain jurisdiction of defendant, which statute did not provide for specific method of service, did not provide trial court authority to order constructive service by publication in reciprocal support enforcement proceeding. D.C. Code 1981, §§ 30-301 to 30-324. *Spevacek v. Wright*, 512 A.2d 1024, 1986 D.C. App. LEXIS 393 (1986).

Timing of motion to vacate.

Father's motion to vacate and set aside all support orders entered against him, under Uni-

form Reciprocal Enforcement of Support Act, was premature where filed before child's 18th birthday, and judgment under Act required current support payments until child reached 18. D.C. Code 1961, §§ 30-301 to 30-324.

Howze v. Howze, 225 A.2d 477, 1967 D.C. App. LEXIS 116 (App. 1967), appeal dismissed by 385 F.2d 986, 128 U.S. App. D.C. 204, 1967 U.S. App. LEXIS 4614 (1967).

§ 46-301.02. Tribunal of the District.

The Family Division is the tribunal of the District.

(Feb. 9, 1996, D.C. Law 11-81, § 102, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-341.2.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Editor's notes. — Uniform Law: This section is based upon § 103 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

ANALYSIS

Authority and duty of court.
Dismissal by federal court.
Trial court jurisdiction.

Authority and duty of court.

While trial court may have erred in entering Uniform Reciprocal Enforcement of Support Act order greater in scope than support obligation under parties' separation agreement, and to that extent issued voidable order, court did not act beyond its power so as to render judgment void, where father repeatedly and voluntarily appeared before courts of District of Columbia and received ample opportunity to present his case, and court's jurisdiction over subject matter was undisputed. D.C. Code 1981, §§ 16-916, 30-306. *Kammerman v. Kammerman*, 543 A.2d 794, 1988 D.C. App. LEXIS 74 (1988).

Under both Maryland and District of Columbia Uniform Reciprocal Enforcement of Support Act laws, duty of court in state where petition for support is filed is merely to determine if petition sets forth prima facie case for support and if so, court so certifies and transfers petition to responding state. D.C. Code 1973, § 30-310; Md.Code 1957, Art. 89C, § 14. *Harris v. Kinard*, 443 A.2d 25, 1982 D.C. App. LEXIS 306 (1982).

Under the Uniform Reciprocal Enforcement of Support Act, District of Columbia courts must apply law of its jurisdiction to determine duty of support when district is responding

state. Md.Code 1957, Art. 89C, § 7; D.C. Code 1973, § 11-1601 et seq. (repealed). *Harris v. Kinard*, 443 A.2d 25, 1982 D.C. App. LEXIS 306 (1982).

Dismissal by federal court.

Even though the United States District Court had dismissed, with prejudice, wife's complaint against husband for maintenance of children, for the stated reason that wife had moved to Maryland and had denied the husband his right of visitation, the Domestic Relations Branch of the Municipal Court for the District of Columbia could entertain wife's petition, under the Uniform Reciprocal Enforcement of Support Act, for an order to require husband, a resident of District of Columbia, to support children, and could grant such an order where wife no longer had any reservations concerning the husband's visiting the children. D.C. Code 1951, §§ 11-762, 11-763(a), 11-1601 et seq., 11-1602(d), 11-1606. *Britt v. Britt*, 153 A.2d 644, 1959 D.C. App. LEXIS 280 (Cr.App. 1959).

Trial court jurisdiction.

Trial court had jurisdiction to consider wife's motion to reduce child support arrearages to judgment although court in original divorce action did not undertake to adjudicate any issue as to support or maintenance and final order was silent as to support and maintenance. D.C. Code 1981, § 30-301 et seq. *Clark v. Clark*, 485 A.2d 621, 1984 D.C. App. LEXIS 578 (1984).

§ 46-301.03. Remedies cumulative.

(a) Remedies provided by this chapter are cumulative and do not affect the

availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(b) This chapter does not:

(1) Provide the exclusive method of establishing or enforcing a support order under the law of the District; or

(2) Grant a tribunal of the District jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

(Feb. 9, 1996, D.C. Law 11-81, § 103, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(a)(2), 53 DCR 3634.)

Cross references. — Court-ordered child support payments, arrearages, interception of District income tax refunds of individuals, see § 47-

Prior Codifications. — 1981 Ed., § 30-341.3.

Effect of amendments. — D.C. Law 16-137 rewrote the section, which had read as follows: "Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law."

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Editor's notes. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Uniform Law: This section is based upon § 104 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

Basis for a Uniform Reciprocal Enforcement of Support Act petition is not a prior judgment, but the existence of a duty to support on part of respondent. D.C. Code §§ 30-301 et seq., 30-303. *Schlecht v. Schlecht*, 387 A.2d 575, 1978 D.C. App. LEXIS 463 (1978).

Under Uniform Reciprocal Enforcement of Support Act, wife, who has obtained foreign divorce, may petition for additional support after divorce decree has been fully satisfied. *Comp.Laws Supp.Mich.1961*, §§ 780.151-

780.173; D.C. Code 1961, §§ 30-301 to 30-324. *Howze v. Howze*, 225 A.2d 477, 1967 D.C. App. LEXIS 116 (App. 1967), appeal dismissed by 385 F.2d 986, 128 U.S. App. D.C. 204, 1967 U.S. App. LEXIS 4614 (1967).

Award for separate maintenance and support for minor children obtained under Reciprocal Enforcement of Support Act did not preclude later statutory action for maintenance and support. D.C. Code 1951, §§ 11-1601 et seq., 11-1603, 16-415. *Figliozzi v. Figliozzi*, 173 A.2d 904, 1961 D.C. App. LEXIS 279 (Cr.App. 1961).

Subchapter II. Jurisdiction.

§ 46-302.01. Bases for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage, the Family Division may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator, if:

(1) The individual is personally served with notice within the District;

(2) The individual submits to the jurisdiction of the District by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) The individual resided with the child in the District;

(4) The individual resided in the District and provided prenatal expenses or support for the child;

(5) The child resides in the District as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in the District and the child may have been conceived by that act of intercourse; or

(7) There is any other basis consistent with the laws of the District and the Constitution of the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) of this section or in any other law of the District may not be used to acquire personal jurisdiction for a tribunal of the District to modify a child support order of another state unless the requirements of §§ 46-306.11 and 46-306.15 are met.

(Feb. 9, 1996, D.C. Law 11-81, § 201, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(b)(1)(B), 53 DCR 3634.)

Section references. — This section is referred to in § 46-302.02.

Prior Codifications. — 1981 Ed., § 30-342.1.

Effect of amendments. — D.C. Law 16-137, designated the existing text as subsec. (a); in the lead-in language to subsec. (a), substituted “establish or enforce” for “establish, enforce, or modify”; in par. (a)(2), substituted “consent in a record” for “consent”; and added subsec. (b).

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 201 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-302.02. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of the District in a proceeding under this chapter or other law of the District relating to a support order continues as long as a tribunal of the District has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by §§ 46-302.05, 46-302.06, and 46-302.11.

(Feb. 9, 1996, D.C. Law 11-81, § 202, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(b)(1)(C), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.2.

Effect of amendments. — D.C. Law 16-137 rewrote section, which had read as follows: “§ 46-302.02. Procedure when exercising jurisdiction over nonresident. “The Family Division, if it is exercising personal jurisdiction over a nonresident under § 46-302.01, may apply § 46-303.15 (special rules of evidence and procedure) to receive evidence from another state, and § 46-303.17 (assistance with discovery) to obtain discovery through a tribunal of another state. In all other respects, subchapters III through VII of this chapter do not apply and the tribunal shall apply the procedural and sub-

stantive law of the District, including the rules on choice of law other than those established by this chapter.”

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 202 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-302.03. Initiating and responding tribunal of the District.

Under this chapter, the Family Division may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

(Feb. 9, 1996, D.C. Law 11-81, § 203, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-342.3.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Editor's notes. — Uniform Law: This section is based upon § 203 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

Where District of Columbia acted as initiating state by filing complaint for reciprocal support on behalf of plaintiff residing in District, and order of support was obtained in Maryland, where defendant resided, and residence of the parties subsequently reversed, and plaintiff filed motion for contempt and increased child support in Maryland based on order of support,

compliance with this section or its Maryland equivalent constituted filing and registration in the District under former § 30-325(a) sufficient to authorize enforcement under former § 30-326(a), giving Superior Court jurisdiction over Maryland support order, including modification and enforcement by contempt. District of Columbia ex rel. Padgett v. Timmons, 118 WLR 145 (Super. Ct. 1990).

§ 46-302.04. Simultaneous proceedings.

(a) A tribunal of the District may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state, but only if:

(1) The petition or comparable pleading in the District is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) If relevant, the District is the home state of the child.

(b) A tribunal of the District may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in the District for filing a responsive pleading challenging the exercise of jurisdiction by the District;

(2) The contesting party timely challenges the exercise of jurisdiction in the District; and

(3) If relevant, the other state is the home state of the child.

(Feb. 9, 1996, D.C. Law 11-81, § 204, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(b)(2)(B), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.4.

Effect of amendments. — D.C. Law 16-137, in the section heading, deleted “in another state” following “proceedings”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 204 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

Waiver.

Biological father under the Uniform Interstate Family Support Act (UIFSA) waived claim on appeal that District of Columbia courts lacked territorial jurisdiction over biological mother’s action for pendente lite child support, where father did not deny mother’s jurisdictional allegations in his answer and counterclaim, father instead asserted that mother’s jurisdictional statement was an allegation he was not required to admit or deny, father made contradictory statements in his

submissions to the courts, both denying he was a resident of the District and stating that he had lived in the District in the years preceding the filing of his counterclaim, and father only filed Virginia petition for child custody well after the expiration of the time for filing a responsive pleading in the District. *Upson v. Wallace*, 3 A.3d 1148, 2010 D.C. App. LEXIS 512 (2010), writ of certiorari denied by 132 S. Ct. 203, 181 L. Ed. 2d 108, 2011 U.S. LEXIS 6155, 80 U.S.L.W. 3185 (U.S. 2011).

§ 46-302.05. Continuing, exclusive jurisdiction to modify child-support order.

(a) A tribunal of the District that has issued a child-support order consistent with the law of the District has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:

(1) At the time of the filing of a request for modification, the District is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) Even if the District is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of the District may continue to exercise jurisdiction to modify its order.

(b) A tribunal of the District that has issued a child-support order consistent with the law of the District may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) All of the parties who are individuals file consent in a record with the tribunal of the District that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) Its order is not the controlling order.

(c) If a tribunal of another state has issued a child-support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that act which modifies a child-support order of a tribunal of the District, tribunals of the District shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of the District that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued *ex parte* or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(Feb. 9, 1996, D.C. Law 11-81, § 205, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(b), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(b)(2)(C), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.5.

Effect of amendments. — D.C. Law 16-137 rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(b) of the Uniform Interstate Family Support Congressional Review Emergency Amend-

ment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 205 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

ANALYSIS

In general.

Jurisdiction to modify orders.

Jurisdiction to terminate orders.

Waiver.

In general.

Assuming child support action was a "proceeding" brought under the Uniform Interstate Family Support Act (UIFSA), the superior court had continuing exclusive jurisdiction over action, even though both parents and child had moved from the District of Columbia. *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

Jurisdiction to modify orders.

Mother's action for permanent child support was not a request for modification of an existing child support order, and thus section of Uniform Interstate Family Support Act (UIFSA), providing that, where parties no longer live in District of Columbia, a trial court has jurisdiction over a request for modification of an existing order only upon consent of the parties, did not apply in determining trial court's subject matter over action; mother's action was an ongoing proceeding, initiated when she and

child resided in District, with the purpose of obtaining a permanent support order that had not yet been issued. *Brown v. Hines-Williams*, 2 A.3d 1077, 2010 D.C. App. LEXIS 499 (2010).

Under the Uniform Interstate Family Support Act, the Superior Court no longer has authority to modify an existing child support order where neither parent nor the child currently reside in the District of Columbia; however, the court retains authority to determine issues concerning enforcement of that order. *Lackman v. Rosenstock*, 126 WLR 829 (Super. Ct. 1998).

Jurisdiction to terminate orders.

The power of the superior court to terminate its child support order rested upon its continuing jurisdiction and did not depend on the court having continuing, exclusive jurisdiction under the Uniform Interstate Family Support Act (UIFSA). *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

Even though the exercise of continuing jurisdiction in child support cases was restricted by the Uniform Interstate Family Support Act (UIFSA), the UIFSA did not disgorge the superior court of continuing jurisdiction to terminate its own child support order, even though

the child for whose benefit the order was entered and both parents moved from the District of Columbia, and where no modification occurred by a court with continuing exclusive jurisdiction. *Neely v. McCray*, 129 WLR 2397 (Super. Ct. 2001).

Waiver.

Biological father under the Uniform Interstate Family Support Act (UIFSA) waived claim on appeal that District of Columbia courts lacked territorial jurisdiction over biological mother's action for pendente lite child support, where father did not deny mother's jurisdictional allegations in his answer and

counterclaim, father instead asserted that mother's jurisdictional statement was an allegation he was not required to admit or deny, father made contradictory statements in his submissions to the courts, both denying he was a resident of the District and stating that he had lived in the District in the years preceding the filing of his counterclaim, and father only filed Virginia petition for child custody well after the expiration of the time for filing a responsive pleading in the District. *Upson v. Wallace*, 3 A.3d 1148, 2010 D.C. App. LEXIS 512 (2010), writ of certiorari denied by 132 S. Ct. 203, 181 L. Ed. 2d 108, 2011 U.S. LEXIS 6155, 80 U.S.L.W. 3185 (U.S. 2011).

§ 46-302.06. Continuing jurisdiction to enforce child-support order.

(a) A tribunal of the District that has issued a child-support order consistent with the law of the District may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this chapter; or

(2) A money judgment for arrears of support and interest on the order accrued before a determination that an order of another state is the controlling order.

(b) A tribunal of the District having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

(Feb. 9, 1996, D.C. Law 11-81, § 206, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(b)(2)(D), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.6.

Effect of amendments. — D.C. Law 16-137 rewrote the section.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 206 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-302.07. Determination of controlling child-support order.

(a) If a proceeding is brought under this chapter and only one tribunal has issued a child-support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under this chapter, and 2 or more child-support orders have been issued by tribunals of the District or another state with regard to the same obligor and same child, a tribunal of the District having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter:

(A) An order issued by a tribunal in the current home state of the child controls; or

(B) If an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of the District shall issue a child-support order, which controls.

(c) If 2 or more child-support orders have been issued for the same obligor and same child, upon request of a party who is an individual or a support enforcement agency, a tribunal of the District having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b) of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to subchapter VI of this chapter, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section has continuing jurisdiction to the extent provided in § 46-302.05 or § 46-302.06.

(f) A tribunal of the District that determines by order which is the controlling order under subsection (b)(1) or (2) or (c) of this section, or that issues a new controlling order under subsection (b)(3) of this section, shall state in that order:

(1) The basis upon which the tribunal made its determination;

(2) The amount of prospective support, if any; and

(3) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by § 46-302.09.

(g) Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

(Feb. 9, 1996, D.C. Law 11-81, § 207, 42 DCR 6748; July 24, 1998, D.C. Law

12-131, § 2(c), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(b)(3)(B), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.7.

Effect of amendments. — D.C. Law 16-137 rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(c) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(c) of the Uniform Interstate Family Support Congressional Review Emergency Amend-

ment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 207 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

Adjudicated father was barred from raising on appeal of order requiring him to pay his child support arrearages in full issue of whether alleged filing defects of German Institute for Guardianship (GIG) when it sought to register German child support order in the District of Columbia required dismissal of child

support proceedings against him, as adjudicated father made no such claim when German child support order was registered, and, under the Uniform Interstate Family Support Act (UIFSA), validity of German child support order was not affected by GIG’s alleged failure to file certified copies of it. *Liuksila v. Stoll*, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

§ 46-302.08. Child support orders for 2 or more obligees.

In responding to registrations or petitions for enforcement of 2 or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of the District shall enforce those orders in the same manner as if the orders had been issued by a tribunal of the District.

(Feb. 9, 1996, D.C. Law 11-81, § 208, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(b)(3)(C), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.8.

Effect of amendments. — D.C. Law 16-137, in the section heading, deleted “Multiple” preceding “child”; and deleted “multiple” preceding “registrations” and “orders”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 208 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-302.09. Credit for payments.

A tribunal of the District shall credit amounts collected for a particular

period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of the District or another state.

(Feb. 9, 1996, D.C. Law 11-81, § 209, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(b)(3)(D), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-342.9.

D.C. Law 16-137 rewrote section, which had read as follows: “Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of the District.”

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see His-

torical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 209 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-302.10. Application of chapter to nonresident subject to personal jurisdiction.

A tribunal of the District exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of the District relating to a support order, or recognizing a support order of a foreign country or political subdivision on the basis of comity may receive evidence from another state pursuant to § 46-303.16, communicate with a tribunal of another state pursuant to § 46-303.17, and obtain discovery through a tribunal of another state pursuant to § 46-303.18. In all other respects, subchapters III through VII of this chapter do not apply and the tribunal shall apply the procedural and substantive law of the District.

(Feb. 9, 1996, D.C. Law 11-81, § 210, as added June 22, 2006, D.C. Law 16-137, § 2(b)(3)(E), 53 DCR 3634.)

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 210 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-302.11. Continuing, exclusive jurisdiction to modify spousal-support order.

(a) A tribunal of the District issuing a spousal-support order consistent with the law of the District has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of the District may not modify a spousal-support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(c) A tribunal of the District that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) An initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in the District; or

(2) A responding tribunal to enforce or modify its own spousal-support order.

(Feb. 9, 1996, D.C. Law 11-81, § 211, as added June 22, 2006, D.C. Law 16-137, § 2(b)(3)(E), 53 DCR 3634.)

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 211 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter III. Civil Provisions of General Application.

§ 46-303.01. Proceedings available under this chapter.

(a) Except as otherwise provided in this chapter, this subchapter applies to all proceedings under this chapter.

(b) Repealed.

(c) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

(Feb. 9, 1996, D.C. Law 11-81, § 301, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(c)(1), 53 DCR 3634.)

Section references. — This section is referred to in § 46-303.05.

Prior Codifications. — 1981 Ed., § 30-343.1.

Effect of amendments. — D.C. Law 16-137 repealed subsec. (b); and in subsec. (c), substituted “initiate” for “commence”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 301 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.02. Proceeding by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of, or for the benefit of, the minor’s child.

(Feb. 9, 1996, D.C. Law 11-81, § 302, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(c)(2), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.2.

Effect of amendments. — D.C. Law 16-

137, in section heading, substituted “Proceeding” for “Action”.

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of

D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 302 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.03. Application of law of the District.

Except as otherwise provided by this chapter, a responding tribunal of the District shall:

(1) Apply the procedural and substantive law generally applicable to similar proceedings originating in the District and may exercise all powers and provide all remedies available in those proceedings; and

(2) Determine the duty of support and the amount payable in accordance with the law and support guidelines of the District.

(Feb. 9, 1996, D.C. Law 11-81, § 303, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(c)(3), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.3.

Effect of amendments. — D.C. Law 16-137, in par. (1), deleted "including the rules on choice of law," following "substantive law".

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 303 of the Uniform Interstate Family Support Act (2001 Act).

This section is based upon § 303 of the Uniform Interstate Family Support Act (1996 Act).

§ 46-303.04. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this chapter, an initiating tribunal of the District shall forward the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of the District shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign country or political subdivision, upon request, the tribunal shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state.

(Feb. 9, 1996, D.C. Law 11-81, § 304, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(d), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(c)(4), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.4.

Effect of amendments. — D.C. Law 16-137, in subsec. (a), deleted “3 copies of” preceding “the petition”; and rewrote subsec. (b), which had read as follows: “(b) If a responding state has not enacted the provisions of this chapter, or a law or procedure substantially similar to this chapter, a tribunal of the District may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(d) of the Uni-

form Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(d) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 304 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.05. Duties and powers of responding tribunal.

(a) When a responding tribunal of the District receives a petition or comparable pleading from an initiating tribunal or directly pursuant to § 46-303.01(c), it shall cause the petition or pleading to be filed and notify the petitioner as to where and when it was filed.

(b) A responding tribunal of the District, to the extent otherwise not prohibited by other law, may do one or more of the following:

(1) Issue or enforce a support order, modify a child-support order, determine the controlling child-support order, or determine parentage;

(2) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) Order income withholding;

(4) Determine the amount of any arrearages and specify a method of payment;

(5) Enforce orders by civil or criminal contempt, or both;

(6) Set aside property for satisfaction of the support order;

(7) Place liens and order execution on the obligor’s property;

(8) Order an obligor to keep the tribunal informed of the obligor’s current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) Issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) Order the obligor to seek appropriate employment by specified methods;

(11) Award reasonable attorney’s fees and other fees and costs; and

(12) Grant any other available remedy.

(c) A responding tribunal of the District shall include in a support order

issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of the District may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of the District issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of the District shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

(Feb. 9, 1996, D.C. Law 11-81, § 305, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(e), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(c)(5), 53 DCR 3634.)

Section references. — This section is referred to in § 46-304.01.

Prior Codifications. — 1981 Ed., § 30-343.5.

Effect of amendments. — D.C. Law 16-137, in the lead-in language of subsec. (b), substituted “not prohibited by other law” for “otherwise authorized by law”; added subsec. (f); and rewrote par. (b)(1), which had read as follows: “(1) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(e) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(e) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 305 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

ANALYSIS

Authority of initiating court.
 Authority of responding court.
 Costs and attorney fees.
 Due process.
 Law governing.
 Review of support award.

Authority of initiating court.

Under both Maryland and District of Columbia Uniform Reciprocal Enforcement of Support Act laws, duty of court in state where petition

for support is filed is merely to determine if petition sets forth prima facie case for support and if so, court so certifies and transfers petition to responding state. D.C. Code 1973, § 30-310; Md.Code 1957, Art. 89C, § 14. *Harris v. Kinard*, 443 A.2d 25, 1982 D.C. App. LEXIS 306 (1982).

Law of initiating jurisdiction determines requisite status of petitioning party in a Uniform Reciprocal Enforcement of Support Act case. F.S.A. §§ 88.111, 88.131. *Watson v. Dreadin*, 309 A.2d 493, 1973 D.C. App. LEXIS 358 (1973), writ of certiorari denied by 415 U.S.

959, 94 S. Ct. 1488, 39 L. Ed. 2d 574, 1974 U.S. LEXIS 1009 (1974).

In proceedings in responding court under Uniform Reciprocal Enforcement of Support Act, mother, from whom support for child was sought, could not challenge standing of maternal grandmother, who had been granted custody of child under preliminary order of initiating court, to initiate the support proceedings. F.S.A. § 88.111. *Watson v. Dreadin*, 309 A.2d 493, 1973 D.C. App. LEXIS 358 (1973), writ of certiorari denied by 415 U.S. 959, 94 S. Ct. 1488, 39 L. Ed. 2d 574, 1974 U.S. LEXIS 1009 (1974).

Authority of responding court.

The court in a responding jurisdiction may order the respondent to pay the amount certified by the initiating jurisdiction or it may select an amount that is either lower or higher than the certified need. *Fox v. Fox*, 110 WLR 1097 (Super. Ct. 1982).

Amount of alimony set by D.C. Court when acting as responding court can be less than the amount set by initiating court. *Patterson v. Patterson*, 112 WLR 2329 (Super. Ct. 1984).

Costs and attorney fees.

Factors to be considered in deciding whether a party in a Uniform Reciprocal Enforcement of Support Act (URESA) action should be ordered to pay all or any part of the opposing party's attorney's fees are the same factors applicable in divorce actions, including: (1) The ability of the party to pay, (2) the quality and nature of the services provided, (3) the necessity for such services, and (4) the results obtained from the services. *Patterson v. Patterson*, 112 WLR 2329 (Super. Ct. 1984).

Due process.

Application of Uniform Reciprocal Enforce-

ment of Support Act did not deny mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where mother was provided with notice of proceeding in responding court and was given opportunity to be heard at hearing which she attended with appointed counsel in responding court. F.S.A. § 88.111. *Watson v. Dreadin*, 309 A.2d 493, 1973 D.C. App. LEXIS 358 (1973), writ of certiorari denied by 415 U.S. 959, 94 S. Ct. 1488, 39 L. Ed. 2d 574, 1974 U.S. LEXIS 1009 (1974).

Law governing.

Under the Uniform Reciprocal Enforcement of Support Act, District of Columbia courts must apply law of its jurisdiction to determine duty of support when district is responding state. Md.Code 1957, Art. 89C, § 7; D.C. Code 1973, § 11-1601 et seq. (repealed). *Harris v. Kinard*, 443 A.2d 25, 1982 D.C. App. LEXIS 306 (1982).

Where respondent failed to prove that he did not have a duty to pay alimony as of the date the Uniform Reciprocal Enforcement of Support Act (URESA) petition was filed in the initiating state, the alimony payments are to be made as of that date. *Patterson v. Patterson*, 112 WLR 2329 (Super. Ct. 1984).

Review of support award.

In a proceeding under the Reciprocal Enforcement of Support Act, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding state. D.C. Code 1951, § 11-1601 et seq. *Menetrez v. Menetrez*, 147 A.2d 772, 1959 D.C. App. LEXIS 221 (Cr.App. 1959).

§ 46-303.06. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of the District, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in the District or another state and notify the petitioner as to where and when the pleading was sent.

(Feb. 9, 1996, D.C. Law 11-81, § 306, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(f), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(c)(6), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.6.

Effect of amendments. — D.C. Law 16-137 substituted "the tribunal" for "it".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(f) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C.

Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(f) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see

§ 2(f) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see His-

torical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 306 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.07. Duties of support enforcement agency.

(a) A support enforcement agency of the District, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency of the District that is providing services to the petitioner shall:

(1) Take all steps necessary to enable an appropriate tribunal in the District or another state to obtain jurisdiction over the respondent;

(2) Request an appropriate tribunal to set a date, time, and place for a hearing;

(3) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) Within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) Within 5 days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of the District that requests registration of a child-support order in the District for enforcement or for modification shall make reasonable efforts:

(1) To ensure that the order to be registered is the controlling order; or

(2) If 2 or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of the District that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of the District shall issue or request a tribunal of the District to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to § 46-303.19.

(f) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(Feb. 9, 1996, D.C. Law 11-81, § 307, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(g), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(c)(7), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.7.

Effect of amendments. — D.C. Law 16-137, in the lead-in language of subsec. (b), substituted “agency of the District” for “agency” and deleted “as appropriate”; in par. (b)(4), substituted “notice in a record” for “written notice”; in par. (b)(5), substituted “communication in a record” for “written communication”; redesignated subsec. (c) as subsec. (f); and added subsecs. (c), (d), and (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(g) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(g) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary addition of § 30-343.7a 1981 Ed., see § 2(h) of the Uniform Interstate Fam-

ily Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(g) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 307 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.07a. [Transferred].

Redesignated as § 46-303.08.

(Feb. 9, 1996, D.C. Law 11-81, § 307a, as added July 24, 1998, D.C. Law 12-131, § 2(h), 45 DCR 2924; redesignated § 308, June 22, 2006, D.C. Law 16-137, § 2(c)(8), 53 DCR 3634.)

§ 46-303.08. Duty of Mayor to order or provide services.

(a) If the Mayor determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Mayor may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

(b) The Mayor may determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with the District and take appropriate action for notification of the determination.

(Feb. 9, 1996, D.C. Law 11-81, § 307a, as added July 24, 1998, D.C. Law 12-131, § 2(h), 45 DCR 2924; redesignated § 308, June 22, 2006, D.C. Law 16-137, § 2(c)(8), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.7a.

2001 Ed., § 46-303.07a

Effect of amendments. — D.C. Law 16-137 rewrote section, which had read as follows:

“§ 46-303.07a. Mayor to order or provide services. “If the Mayor determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Mayor may order the agency to perform its

duties under this chapter or may provide those services directly to the individual.”

Temporary Addition of Section. — For temporary (225 day) amendment of section, see § 2(h) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(h) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(h) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

§ 46-303.09. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

(Feb. 9, 1996, D.C. Law 11-81, § 308, 42 DCR 6748; redesignated § 309, June 22, 2006, D.C. Law 16-137, § 2(c)(9), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.8.

2001 Ed., § 46-303.08

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.08 has been recodified as § 46-303.09 by D.C. Law 16-137, § 2(c)(9).

Uniform Law: This section is based upon § 308 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.10. Duties of Mayor.

(a) The Mayor, or the Mayor’s designee, is the state information agency under this chapter.

(b) The state information agency shall:

(1) Compile and maintain a current list, including addresses, of the tribunals in the District which have jurisdiction under this chapter and any support enforcement agencies in the District and transmit a copy to the state information agency of every other state;

(2) Maintain a register of the names and addresses of tribunals and support enforcement agencies received from other states;

(3) Forward to the appropriate tribunal in the place in the District in which the obligee who is an individual or the obligor resides, or in which the obligor’s property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(4) Obtain information concerning the location of the obligor and the obligor’s property within the District not exempt from execution by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor’s address from employers, and

examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

(Feb. 9, 1996, D.C. Law 11-81, § 309, 42 DCR 6748; redesignated § 310, June 22, 2006, D.C. Law 16-137, § 2(c)(10), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.9.

2001 Ed., § 46-303.09

Effect of amendments. — D.C. Law 16-137 rewrote the section.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Former § 46-303.10 has been recodified as § 46-303.11 by D.C. Law 16-137, § 2(c)(10).

Uniform Law: This section is based upon § 310 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.11. Pleadings and accompanying documents.

(a) In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage, or to register and modify a support order of another state must file a petition. Unless otherwise ordered under § 46-303.12, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

(Feb. 9, 1996, D.C. Law 11-81, § 310, 42 DCR 6748; redesignated § 311, June 22, 2006, D.C. Law 16-137, § 2(c)(11), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.10.

2001 Ed., § 46-303.10

Effect of amendments. — D.C. Law 16-137, rewrote subsec. (a), which had read as follows: "(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under § 46-303.11 (nondisclosure of information in exceptional circumstances), the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and

the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent."

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 30-341.1.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.11 has been recodified as § 46-303.12 by D.C. Law 16-137, § 2(c)(12).

Uniform Law: This section is based upon § 311 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.12. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

(Feb. 9, 1996, D.C. Law 11-81, § 311, 42 DCR 6748; redesignated § 312, June 22, 2006, D.C. Law 16-137, § 2(c)(12), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.11.

2001 Ed., § 46-303.11

Effect of amendments. — D.C. Law 16-137 rewrote section, which had read as follows: “§ 46-303.11. Nondisclosure of information in exceptional circumstances. ”Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.”

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.12 has been recodified as § 46-303.13 by D.C. Law 16-137, § 2(c)(13).

Uniform Law: This section is based upon § 312 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.13. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney’s fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney’s fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under subchapter VI of this chapter, a hearing is presumed to have

been requested primarily for delay if a registered support order is confirmed or enforced without change.

(Feb. 9, 1996, D.C. Law 11-81, § 312, 42 DCR 6748; redesignated § 313, June 22, 2006, D.C. Law 16-137, § 2(c)(13), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.12.

2001 Ed., § 46-303.12

Effect of amendments. — D.C. Law 16-137, in subsec. (c), deleted “(enforcement and modification of support order after registration)” following “this chapter”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.13 has been recodified as § 46-303.14 by D.C. Law 16-137, § 2(c)(14).

Uniform Law: This section is based upon § 313 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.14. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in the District to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in the District to participate in the proceeding.

(Feb. 9, 1996, D.C. Law 11-81, § 313, 42 DCR 6748; redesignated § 314, June 22, 2006, D.C. Law 16-137, § 2(c)(14), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.13.

2001 Ed., § 46-303.13

Effect of amendments. — D.C. Law 16-137, in subsec. (a), substituted “a proceeding under this chapter” for “a proceeding”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.14 has been recodified as § 46-303.15 by D.C. Law 16-137, § 2(c)(15).

Uniform Law: This section is based upon § 314 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.15. Nonparentage as defense.

A party whose parentage of a child has been previously determined by, or pursuant to, law may not plead nonparentage as a defense to a proceeding under this chapter.

(Feb. 9, 1996, D.C. Law 11-81, § 314, 42 DCR 6748; redesignated § 315, June 22, 2006, D.C. Law 16-137, § 2(c)(15), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.14.

2001 Ed., § 46-303.14

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Former § 46-303.15 has been recodified as § 46-303.16 by D.C. Law 16-137, § 2(c)(16).

Uniform Law: This section is based upon § 315 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.16. Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of the District is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of the District by telephone, telecopier, or other means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of the District shall permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of the District shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

(Feb. 9, 1996, D.C. Law 11-81, § 315, 42 DCR 6748; redesignated § 316, June 22, 2006, D.C. Law 16-137, § 2(c)(16), 53 DCR 3634.)

Section references. — This section is referred to in §§ 46-302.02 and 46-302.06.

Prior Codifications. — 1981 Ed., § 30-343.15.

2001 Ed., § 46-303.15

Effect of amendments. — D.C. Law 16-137, in subsec. (a), substituted “a nonresident party who is an individual in a tribunal” for “the petitioner in a responding tribunal”; in subsec. (e), substituted “record” for “writing”; in subsec. (f), substituted “shall” for “may”; added subsec. (j); and rewrote subsec. (b), which had read as follows: “(b) A verified petition, affidavit, or document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under

oath by a party or witness residing in another state.”

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.16 has been recodified as § 46-303.17 by D.C. Law 16-137, § 2(c)(17).

Uniform Law: This section is based upon § 316 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.17. Communications between tribunals.

A tribunal of the District may communicate with a tribunal of another state or foreign country or political subdivision in a record, or by telephone or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state or foreign country or political subdivision. A tribunal of the District may furnish similar information by similar means to a tribunal of another state or foreign country or political subdivision.

(Feb. 9, 1996, D.C. Law 11-81, § 316, 42 DCR 6748; redesignated § 317, June 22, 2006, D.C. Law 16-137, § 2(c)(17), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.16.

2001 Ed., § 46-303.16

Effect of amendments. — D.C. Law 16-137 rewrote section, which had read as follows: “§ 46-303.16. Communications between tribunals. “A tribunal of the District may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of the District may furnish similar information by similar means to a tribunal of another state.”

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Former § 46-303.17 has been recodified as § 46-303.18 by D.C. Law 16-137, § 2(c)(18).

Uniform Law: This section is based upon § 317 of the Uniform Interstate Family Support Act (2001 Act).

This section is based upon § 317 of the Uniform Interstate Family Support Act (1996 Act).

CASE NOTES

In general.

Trial court ruling on father’s motion to terminate or modify District of Columbia child support order in response to subsequent Maryland orders should have sought guidance from the Maryland court itself. *Christopher v.*

Aguigui, 841 A.2d 310, 2003 D.C. App. LEXIS 531 (2003).

If the legal effect of a child support order in another jurisdiction is not understood, then it is incumbent upon the trial court, when appropriate, to seek guidance from the issuing jurisdiction.

tion. *Christopher v. Aguigui*, 841 A.2d 310, 2003 D.C. App. LEXIS 531 (2003).

§ 46-303.18. Assistance with discovery.

A tribunal of the District may:

- (1) Request a tribunal of another state to assist in obtaining discovery; and
- (2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

(Feb. 9, 1996, D.C. Law 11-81, § 317, 42 DCR 6748; redesignated § 318, June 22, 2006, D.C. Law 16-137, § 2(c)(18), 53 DCR 3634.)

Section references. — This section is referred to in §§ 46-302.02 and 46-302.06.

Prior Codifications. — 1981 Ed., § 30-343.17.

2001 Ed., § 46-303.17

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Former § 46-303.18 has been recodified as § 46-303.19 by D.C. Law 16-137, § 2(c)(19).

Uniform Law: This section is based upon § 318 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-303.19. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of the District shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in the District, upon request from the support enforcement agency of the District or another state, a support enforcement agency of the District or a tribunal of the District shall:

- (1) Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and
- (2) Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of the District receiving redirected payments from another state pursuant to a law similar to subsection (b) of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

(Feb. 9, 1996, D.C. Law 11-81, § 318, 42 DCR 6748; redesignated § 319, June 22, 2006, D.C. Law 16-137, § 2(c)(19), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-343.18.

2001 Ed., § 46-303.18

Effect of amendments. — D.C. Law 16-

137, designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 319 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter IV. Establishment of Support Order.

§ 46-304.01. Petition to establish support order.

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of the District may issue a support order if:

(1) The individual seeking the order resides in another state; or

(2) The support enforcement agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child-support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) A presumed father of the child;

(2) Petitioning to have his paternity adjudicated;

(3) Identified as the father of the child through genetic testing;

(4) An alleged father who has declined to submit to genetic testing;

(5) Shown by clear and convincing evidence to be the father of the child;

(6) An acknowledged father as provided by §§ 16-909.01 to 16-909.03 and 16-909.05;

(7) The mother of the child; or

(8) An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and an opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 46-303.05.

(Feb. 9, 1996, D.C. Law 11-81, § 401, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(d), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-344.1.

Effect of amendments. — D.C. Law 16-137, in subsec. (c), deleted "(duties and powers of responding tribunal)" following "§ 46-303.05"; and rewrote subsec. (b).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 401 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter V. Enforcement of Order of Another State Without Registration.

§ 46-305.01. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer under Chapter 2 of this title, without first filing a petition or comparable pleading or registering the order with a tribunal of the District.

(Feb. 9, 1996, D.C. Law 11-81, § 501, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(e)(1), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-345.1.

Effect of amendments. — D.C. Law 16-137 substituted "sent by or on behalf of the obligee, or by the support enforcement agency, to the person" for "sent to the person or entity".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(i) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of subchapter, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of subchapter heading, see § 2(i) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

For temporary amendment of section, see § 2(i) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-94. — For legislative history of D.C. Law 12-94, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 501 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-305.02. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of the District.

(c) Except as otherwise provided in subsection (d) of this section and § 46-305.03, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) The duration and amount of periodic payments of current child support stated as a sum certain;

(2) The person designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney stated as sums certain; and

(5) The amount of periodic payments of arrearages and interest on arrearages stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income-withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income; and

(3) The times within which the employer must implement the withholding order and forward the child support payment.

(Feb. 9, 1996, D.C. Law 11-81, § 502, as added July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(e)(2), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-345.2.

Effect of amendments. — D.C. Law 16-137, in par. (c)(2), deleted "or agency" following "person".

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(i) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Application of Law 12-131: See Historical and Statutory Notes following § 46-301.01.

Uniform Law: This section is based upon § 502 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-305.03. Employer's compliance with 2 or more income-withholding orders.

If an obligor's employer receives 2 or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for 2 or more child-support obligees.

(Feb. 9, 1996, D.C. Law 11-81, § 503, as added July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(e)(3), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-345.3.

Effect of amendments. — D.C. Law 16-137 rewrote section, which had read as follows: “§ 46-305.03. Compliance with multiple income-withholding orders. “If an obligor’s employer receives multiple income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor’s principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.”

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(i) of the Uniform

Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(i) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Application of Law 12-131: See Historical and Statutory Notes following § 46-301.01.

Uniform Law: This section is based upon § 503 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-305.04. Immunity from civil liability.

An employer who complies with an income-withholding order issued in another state in accordance with this chapter is not subject to civil liability to an individual or agency with regard to the employer’s withholding of child support from the obligor’s income.

(Feb. 9, 1996, D.C. Law 11-81, § 504, as added July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924.)

Prior Codifications. — 1981 Ed., § 30-345.4.

Temporary Addition of Section. — For temporary addition of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(i) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Editor’s notes. — Application of Law 12-131: See Historical and Statutory Notes following § 46-301.01.

Uniform Law: This section is based upon § 504 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-305.05. Penalties for noncompliance.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of the District.

(Feb. 9, 1996, D.C. Law 11-81, § 505, as added July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924.)

Prior Codifications. — 1981 Ed., § 30-345.5.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2875).

Emergency legislation. — For temporary addition of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(i) of the Uniform Interstate Family Support Congressional

Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Editor's notes. — Application of Law 12-131: See Historical and Statutory Notes following § 46-301.01.

Uniform Law: This section is based upon § 505 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-305.06. Contest by obligor.

(a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in the District by registering the order in a tribunal of the District and filing a contest to that order as provided in subchapter VI of this chapter, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of the District.

(b) The obligor shall give notice of the contest to:

(1) A support enforcement agency providing services to the obligee;

(2) Each employer that has directly received an income-withholding order relating to the obligor; and

(3) The person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

(Feb. 9, 1996, D.C. Law 11-81, § 506, as added July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(e)(4), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-345.6.

Effect of amendments. — D.C. Law 16-137, in subsec. (a), substituted “employer in the District by registering the order in a tribunal of the District and filing a contest to that order as provided in subchapter VI of this chapter, or otherwise contesting the order” for “employer in the District”, and deleted “Section 604 applies to the contest.”; in par. (b)(2), substituted “order relating to the obligor” for “order”; and in par. (b)(3), deleted “or agency” following “person” in two places.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(i) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(i) of the Uniform

Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(i) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor's notes. — Application of Law 12-131: See Historical and Statutory Notes following § 46-301.01.

Uniform Law: This section is based upon § 506 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-305.07. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of the District.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of the District to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

(Feb. 9, 1996, D.C. Law 11-81, § 507, formerly § 502, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(i), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(e)(5), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-345.7.

Effect of amendments. — D.C. Law 16-137, in subsec. (a), substituted “party or support enforcement agency” for “party”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(i) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(i) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151), and § 2(i) of the Uni-

form Interstate Family Support Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 507 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter VI. Registration, Enforcement, and Modification of Support Order.

PART A.

REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER.

§ 46-306.01. Registration of order for enforcement.

A support order or income-withholding order issued by a tribunal of another state may be registered in the District for enforcement.

(Feb. 9, 1996, D.C. Law 11-81, § 601, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(f)(2), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-346.1.

Effect of amendments. — D.C. Law 16-137 deleted “an” preceding “income-withholding”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 601 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

The Superior Court had the jurisdiction to modify the order of modification from Texas, where the foreign support order was registered, giving it the same legal force and effect of a support order entered by the Superior Court itself. *R.M.N. v. M.R.N.*, 119 WLR 1985 (Super. Ct. 1991).

Where District of Columbia acted as initiating state by filing complaint for reciprocal support on behalf of plaintiff residing in District, and order of support was obtained in Maryland, where defendant resided, and residence of the

parties subsequently reversed, and plaintiff filed motion for contempt and increased child support in Maryland based on order of support, compliance with § 30-316 or its Maryland equivalent constituted filing and registration in the District under subsection (a) sufficient to authorize enforcement under § 30-326(a), giving Superior Court jurisdiction over Maryland support order, including modification and enforcement by contempt. *District of Columbia ex rel. Padgett v. Timmons*, 118 WLR 145 (Super. Ct. 1990).

§ 46-306.02. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in the District by sending the following records and information to the Superior Court of the District of Columbia:

(1) A letter of transmittal to the tribunal requesting registration and enforcement;

(2) Two copies, including 1 certified copy, of the order to be registered, including any modification of the order;

(3) A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) The name of the obligor and, if known:

(A) The obligor's address and social security number;

(B) The name and address of the obligor's employer and any other source of income of the obligor; and

(C) A description and the location of property of the obligor in the District not exempt from execution; and

(5) Except as otherwise provided in § 46-303.12, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of the District may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If 2 or more orders are in effect, the person requesting registration shall:

(1) Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) Specify the order alleged to be the controlling order, if any; and

(3) Specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

(Feb. 9, 1996, D.C. Law 11-81, § 602, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(f)(3), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-346.2.

Effect of amendments. — D.C. Law 16-137, in the lead-in language to subsec. (a), substituted “records” for “documents”; in par. (a)(2), substituted “the order” for “all orders”, and substituted “the order” for “an order”; in par. (a)(3), substituted “person requesting” for “party seeking”; in par. (a)(5), substituted “Except as otherwise provided in § 46-303.12, the” for “The”, and deleted “agency or” preceding “person”; and added subsecs. (d) and (e).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 602 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.03. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of the District.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of the District.

(c) Except as otherwise provided in this subchapter, a tribunal of the District shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

(Feb. 9, 1996, D.C. Law 11-81, § 603, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-346.3.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Editor’s notes. — Uniform Law: This section is based upon § 603 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.04. Choice of law.

(a) Except as otherwise provided in subsection (d) of this section, the law of the issuing state governs:

(1) The nature, extent, amount, and duration of current payments under a registered support order;

(2) The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) The existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of the District or of the issuing state, whichever is longer, applies.

(c) A responding tribunal of the District shall apply the procedures and remedies of the District to enforce current support and collect arrears and interest due on a support order of another state registered in the District.

(d) After a tribunal of the District or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of the District shall prospectively apply the law of the state issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

(Feb. 9, 1996, D.C. Law 11-81, § 604, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(f)(4), 53 DCR 3634.)

Section references. — This section is referred to in §§ 46-305.06 and 46-306.07.

Prior Codifications. — 1981 Ed., § 30-346.4.

Effect of amendments. — D.C. Law 16-137 rewrote the section.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 604 of the Uniform Interstate Family Support Act (2001 Act).

PART B.

CONTEST OF VALIDITY OR ENFORCEMENT.

§ 46-306.05. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) A notice must inform the nonregistering party:

(1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of the District;

(2) That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the notice;

(3) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) Of the amount of any alleged arrearages.

(c) If the registering party asserts that 2 or more orders are in effect, a notice must also:

(1) Identify the 2 or more orders and the order alleged by the registering person to be the controlling order and the consolidated arrears, if any;

(2) Notify the nonregistering party of the right to a determination of which is the controlling order;

(3) State that the procedures provided in subsection (b) of this section apply to the determination of which is the controlling order; and

(4) State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer or holder pursuant to Chapter 2 of this title.

(Feb. 9, 1996, D.C. Law 11-81, § 605, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(j), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(f)(5), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-346.5.

Effect of amendments. — D.C. Law 16-137, in subsec. (b), substituted "A notice" for "The notice"; redesignated subsec. (c) as subsec. (d); and added subsec. (c).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(j) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(j) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(j) of the Uniform Interstate Family Sup-

port Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 29, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 605 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.06. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in the District shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 46-306.07.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties as to the date, time, and place of the hearing.

(Feb. 9, 1996, D.C. Law 11-81, § 606, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(k), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(f)(6), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-346.6.

Effect of amendments. — D.C. Law 16-137, in subsec. (a), deleted “(contest of registration or enforcement)” following “§ 46-306.07”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(k) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(k) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(k) of the Uniform Interstate Family Support Congressional Review Emergency Amend-

ment Act of 1998 (D.C. Act 12-310, March 29, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-401.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 606 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.07. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving 1 or more of the following defenses:

- (1) The issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) The order was obtained by fraud;
- (3) The order has been vacated, suspended, or modified by a later order;
- (4) The issuing tribunal has stayed the order pending appeal;
- (5) There is a defense under the law of the District to the remedy sought;
- (6) Full or partial payment has been made;
- (7) The statute of limitation under § 46-306.04 precludes enforcement of some or all of the alleged arrearages; or
- (8) The alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of the District.

(c) If the contesting party does not establish a defense under subsection (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

(Feb. 9, 1996, D.C. Law 11-81, § 607, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(f)(7), 53 DCR 3634.)

Section references. — This section is referred to in § 46-306.06.

Prior Codifications. — 1981 Ed., § 30-346.7.

Effect of amendments. — D.C. Law 16-137, in par. (a)(6), substituted “;” for “; or”; in par. (a)(7), deleted “(choice of law)” following “§ 46-306.04”, substituted “alleged arrearages” for “arrearages”, and substituted “; or” for a period; and added par. (a)(8).

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 607 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

Valid Virginia child support order that had been properly registered in the District of Co-

lumbia had to be confirmed. *Prisco v. Stroup*, 132 WLR 2513 (Super. Ct. 2004).

§ 46-306.08. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

(Feb. 9, 1996, D.C. Law 11-81, § 608, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-346.8.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Editor’s notes. — Uniform Law: This section is based upon § 608 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

Issue of whether German court that entered child support order against adjudicated father had personal jurisdiction over him was barred by doctrine of res judicata on appeal of order requiring him to pay his arrearages in full rather than in monthly installments, as adjudicated father failed to appeal order that had rejected all of his jurisdictional claims and required registration, confirmation, and en-

forcement of German child support order pursuant to Uniform Interstate Family Support Act (UIFSA), and specific language of the UIFSA barred consideration of jurisdictional issue more than six years after issuance of order directing the registration, confirmation, and enforcement of the German child support order. *Liuksila v. Stoll*, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

PART C.

REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER.

§ 46-306.09. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in the District in the same manner as provided in part A of this subchapter if

the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

(Feb. 9, 1996, D.C. Law 11-81, § 609, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-346.9.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Editor's notes. — Uniform Law: This section is based upon § 609 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

In general.

Valid Virginia child support order that had been properly registered in the District of Co-

lumbia had to be confirmed. *Prisco v. Stroup*, 132 WLR 2513 (Super. Ct. 2004).

§ 46-306.10. Effect of registration for modification.

A tribunal of the District may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of the District, but the registered order may be modified only if the requirements of § 46-306.11, § 46-306.13, or § 46-306.15 have been met.

(Feb. 9, 1996, D.C. Law 11-81, § 610, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(f)(8), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-346.10.

Effect of amendments. — D.C. Law 16-137 substituted “§ 46-306.11, § 46-306.13, or § 46-306.15” for “§ 46-306.11”; and deleted “(modification of child support order of another state)” following “§ 46-306.11”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor's notes. — Uniform Law: This section is based upon § 610 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.11. Modification of child-support order of another state.

(a) If § 46-306.13 does not apply, except as otherwise provided in § 46-306.15, upon petition, a tribunal of the District may modify a child-support order issued in another state which is registered in the District if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(A) Neither the child, the obligee who is an individual, nor the obligor resides in the issuing state;

(B) A petitioner who is a nonresident of the District seeks modification; and

(C) The respondent is subject to the personal jurisdiction of the tribunal of the District; or

(2) The District is the state of residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of the District, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of the District to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the District and the order may be enforced and satisfied in the same manner.

(c) Except as otherwise provided in § 46-306.15, a tribunal of the District may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If 2 or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under § 46-302.07 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of the District.

(e) On the issuance of an order by a tribunal of the District modifying a child-support order issued in another state, the tribunal of the District becomes the tribunal having continuing, exclusive jurisdiction.

(Feb. 9, 1996, D.C. Law 11-81, § 611, 42 DCR 6748; July 24, 1998, D.C. Law 12-131, § 2(l), 45 DCR 2924; June 22, 2006, D.C. Law 16-137, § 2(f)(9), 53 DCR 3634.)

Section references. — This section is referred to in § 46-306.10.

Prior Codifications. — 1981 Ed., § 30-346.11.

Effect of amendments. — D.C. Law 16-137, rewrote the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(l) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary amendment of section, see § 2(l) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary amendment of section, see § 2(l) of the Uniform Interstate Family Sup-

port Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 611 of the Uniform Interstate Family Support Act (2001 Act).

CASE NOTES

Modification and termination.

Once a foreign court's child support order is registered in the District of Columbia, the trial court has authority to modify the registered order, subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the District of Columbia. *Prisco v. Stroup*, 947 A.2d 455, 2008 D.C. App. LEXIS 227 (2008), remanded by 3 A.3d 316, 2010 D.C. App. LEXIS 508 (D.C. 2010).

Prerequisites for exercising jurisdiction to

modify registered, foreign child support order were established, where both parents and child had left issuing state, but only father resided in District of Columbia. *Prisco v. Stroup*, 132 WLR 2513 (Super. Ct. 2004).

"Modification," as used in the Uniform Interstate Family Support Act (UIFSA) is not synonymous with "termination;" thus, any prohibition against modification of a support order in UIFSA need not extend to prohibit the termination of the order. *Neely v. McCray*, 129 WLR 2397 (2001).

§ 46-306.12. Recognition of order modified in another state.

If a child-support order issued by a tribunal of the District is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of the District:

- (1) May enforce its order that was modified only as to arrears and interest accruing before the modification;
- (2) May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and
- (3) Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

(Feb. 9, 1996, D.C. Law 11-81, § 612, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(f)(10), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-346.12.

Effect of amendments. — D.C. Law 16-137 rewrote the section.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 612 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.13. Jurisdiction to modify child support order of another state when individual parties reside in the District.

(a) If all of the parties who are individuals reside in the District and the child does not reside in the issuing state, a tribunal of the District has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of the District exercising jurisdiction under this section shall apply the provisions of subchapters I and II of this chapter, and the procedural and substantive law of the District to the proceeding for enforcement or modification. Subchapters III, IV, V, VII, and VIII of this chapter do not apply.

(Feb. 9, 1996, D.C. Law 11-81, § 613, as added July 24, 1998, D.C. Law 12-131, § 2(m), 45 DCR 2924; Apr. 12, 2000, D.C. Law 13-91, § 145, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 30-346.13.

Effect of amendments. — D.C. Law 13-91 deleted the phrase “of this chapter” following the enumeration of subchapters.

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(m) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(m) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary addition of section, see § 2(m) of the Uniform Interstate Family Support Congressional Review Emergency Amendment Act

of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 13-91. — Law 13-91, the “Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Editor’s notes. — Uniform Law: This section is based upon § 613 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.14. Notice to issuing tribunal of modification.

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

(Feb. 9, 1996, D.C. Law 11-81, § 614, as added July 24, 1998, D.C. Law 12-131, § 2(m), 45 DCR 2924.)

Prior Codifications. — 1981 Ed., § 30-346.14.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 7(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(m) of Uniform Interstate Family Support Temporary Amendment Act of 1998 (D.C. Law 12-94, April 29, 1998, law notification 45 DCR 2785).

Emergency legislation. — For temporary addition of section, see § 2(m) of the Uniform Interstate Family Support Emergency Amendment Act of 1997 (D.C. Act 12-225, December 23, 1997, 45 DCR 151).

For temporary addition of section, see § 2(m) of the Uniform Interstate Family Support Con-

gressional Review Emergency Amendment Act of 1998 (D.C. Act 12-310, March 20, 1998, 45 DCR 1950).

For temporary amendment of section, see § 7(a) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 7(a) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 7(a) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 7(a) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary amendment of section, see § 13 of the Self-Sufficiency Promotion Emer-

gency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 13 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 13 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 13 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-9, February 17, 1999, 46DCR 2492).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform

Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

Legislative history of Law 12-131. — For legislative history of D.C. Law 12-131, see Historical and Statutory Notes following § 46-301.01.

Editor's notes. — Application of Law 12-131: See Historical and Statutory Notes following § 46-301.01.

Uniform Law: This section is based upon § 614 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-306.15. Jurisdiction to modify child-support order of foreign country or political subdivision.

(a) If a foreign country or political subdivision that is a state will not or may not modify its order pursuant to its laws, a tribunal of the District may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to § 46-306.11 has been given or whether the individual seeking modification is a resident of the District or of the foreign country or political subdivision.

(b) An order issued pursuant to this section is the controlling order.

(Feb. 9, 1996, D.C. Law 11-81, § 615, as added June 22, 2006, D.C. Law 16-137, § 2(f)(11), 53 DCR 3634.)

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 615 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter VII. Determination of Parentage.

§ 46-307.01. Proceeding to determine parentage.

A court of the District authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage brought under this chapter or a law or procedure substantially similar to this chapter.

(Feb. 9, 1996, D.C. Law 11-81, § 701, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(g), 53 DCR 3634.)

Cross references. — Interstate family support, available proceeding, determination of parentage, see § 46-303.01.

Prior Codifications. — 1981 Ed., § 30-347.1.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see His-

torical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: "This act shall apply as of April 1, 2007."

Editor's notes. — Uniform Law: This section is based upon § 701 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter VIII. Interstate Rendition.

§ 46-308.01. Grounds for rendition.

(a) For purposes of this subchapter, the term “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The Mayor may:

(1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in the District with having failed to provide for the support of an obligee; or

(2) On the demand by the governor of another state, surrender an individual found in the District who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

(Feb. 9, 1996, D.C. Law 11-81, § 801, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-348.1.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Editor's notes. — Uniform Law: This section is based upon § 801 of the Uniform Interstate Family Support Act (2001 Act).

§ 46-308.02. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in the District with having failed to provide for the support of an obligee, the Mayor may require a prosecutor of the District to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the Mayor surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the

demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

(Feb. 9, 1996, D.C. Law 11-81, § 802, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(h), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-348.2.

Effect of amendments. — D.C. Law 16-137, in subsec. (b), deleted “the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act,” following “this chapter”.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 802 of the Uniform Interstate Family Support Act (2001 Act).

Subchapter IX. Miscellaneous Provisions.

§ 46-309.01. Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Feb. 9, 1996, D.C. Law 11-81, § 901, 42 DCR 6748; June 22, 2006, D.C. Law 16-137, § 2(i), 53 DCR 3634.)

Prior Codifications. — 1981 Ed., § 30-349.1.

Effect of amendments. — D.C. Law 16-137 rewrote the section which had read as follows: “This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.”

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see His-

torical and Statutory Notes following § 46-301.01.

Legislative history of Law 16-137. — For Law 16-137, see notes following § 46-301.01.

Effective date. — Applicability: Section 3 of D.C. Law 16-137 provided: “This act shall apply as of April 1, 2007.”

Editor’s notes. — Uniform Law: This section is based upon § 901 of the Uniform Interstate Family Support Act (2001 Act).

CHAPTER 4. MARRIAGE.

Sec.

46-401. Equal access to marriage.

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46-402. Marriages void ab initio — Judicial decree.

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§ 46-401. Equal access to marriage.

(a) Marriage is the legally recognized union of 2 persons. Any person may enter into a marriage in the District of Columbia with another person, regardless of gender, unless the marriage is expressly prohibited by § 46-401.01 or § 46-403.

(b) Where necessary to implement the rights and responsibilities relating to the marital relationship or familial relationships, gender-specific terms shall be construed to be gender neutral for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law, or any other source of civil law.

(Mar. 3, 1901, 312 Stat. 1391, ch. 854, 1283, as added Mar. 3, 2010, D.C. Law 18-110, § 2(b), 57 DCR 27.)

Cross references. — Proceedings to annul marriage, see §§ 16-903, 16-904.

Section references. — This section is referenced in § 32-702.

Legislative history of Law 18-110. — Law 18-110, the “Religious Freedom and Civil Marriage Equality Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-482, which was referred to the Committee on Public Safety and the Judiciary. The bill was

adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-248 and transmitted to both Houses of Congress for its review. D.C. Law 18-110 became effective on March 3, 2010.

Editor’s notes. — Former § 46-401 has been recodified as § 46-401.01 by D.C. Law 18-110, § 2(a).

CASE NOTES

ANALYSIS

Common law marriage.

Construction of statutes.

Due process.

Effect of informal or invalid marriage.

Marriage by cohabitation and reputation.

Marriage by mutual agreement.

Marriage in another jurisdiction.

Operation and effect of annulment.

Presumptions and burden of proof.

Sufficiency of evidence.

Termination of prior marriage.

Common law marriage.

Common-law marriage is recognized in Dis-

trict of Columbia. *McCoy v. District of Columbia*, 256 A.2d 908, 1969 D.C. App. LEXIS 326 (App. 1969).

Under law of the District of Columbia, ceremonial and common-law marriages are equally lawful, solemn, and binding. *National Union Fire Ins. Co. v. Britton*, 187 F.Supp. 359, 1960 U.S. Dist. LEXIS 4226 (D.D.C.1960).

Construction of statutes.

Since the marriage and divorce statutes of the District of Columbia read as a whole, are not clear regarding intention of Congress as to whether doctrines of laches and estoppel can be applied in both independent annulment suits and in an attack upon marriage in divorce action on ground of invalidity of prior divorce decree of one of the parties, the statutes must be construed and a reasonable intent must be attributed to Congress. D.C. Code 1940, §§ 30—101, 30—104. *Ruppert v. Ruppert*, 134 F.2d 497, 1942 U.S. App. LEXIS 2447 (1942).

When the City Council passed the Marriage and Divorce Act, it is contemplated that the parties subject to such legislation would be a man and woman—not persons of the same sex. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

Due process and equal protection clauses do not require the District to authorize same-sex marriages. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

Due process.

Same-sex marriage is not a fundamental right protected by due process clause, as that kind of relationship is not deeply rooted in this nation's history and tradition. U.S.C. Const.Amend. 5. *Dean v. District of Columbia*, 653 A.2d 307, 1995 D.C. App. LEXIS 8 (1995).

Effect of informal or invalid marriage.

Marriage, which is merely voidable, cannot be attacked after death of either spouse. *Nunley v. Nunley*, 210 A.2d 12, 1965 D.C. App. LEXIS 192 (App. 1965).

Under statute rendering marriage of person whose previous marriage has not been terminated by divorce absolutely void ab initio, no decree is required to declare invalidity (D.C. Code 1929, T. 14, § 1). *Frey v. Frey*, 59 F.2d 1046, 1932 U.S. App. LEXIS 3535 (1932).

Where husband's divorce was invalid, subsequent marriage was void, wife acquired no property rights, and children acquired no rights except to have legitimacy declared (D.C. Code 1929, T. 14, § 67). *Frey v. Frey*, 59 F.2d 1046, 1932 U.S. App. LEXIS 3535 (1932).

The provision of article 62, Code Pub.Civ.Laws Md., that the marriage of persons within certain degrees of kindred or affinity "shall be void," does not render such a marriage ipso facto void, but voidable only upon judgment or decree for that purpose found or

passed. *Tyler v. Andrews*, 40 App.D.C. 100, 1913 U.S. App. LEXIS 2056 (1913).

If marriage is void, fact of nullity may be shown directly or collaterally. *Nunley v. Nunley*, 210 A.2d 12, 1965 D.C. App. LEXIS 192 (App. 1965).

Marriage by cohabitation and reputation.

Under District of Columbia law, if parties agreed to be husband and wife in ignorance of an impediment to a lawful marriage, a later removal of the impediment would have resulted in a common-law marriage between the parties if they continued to cohabit and live together as husband and wife. *Cooper v. Lish*, 318 F.2d 262, 1963 U.S. App. LEXIS 5361 (C.A.D.C. 1963).

If man and woman agree to be married before impediment was removed and continued thereafter to cohabit and live together as husband and wife, a common-law union between man and woman was effected when woman's prior spouse was awarded divorce. *Matthews v. Britton*, 303 F.2d 408, 1962 U.S. App. LEXIS 5352 (C.A.D.C. 1962).

Where ceremonial marriage of parties was void because it occurred before annulment of husband's former marriage to another had become final, but the parties continued their cohabitation after the annulment became final, there was a valid common law marriage, and wife was not entitled to annulment because of the invalidity of the ceremonial marriage. D.C. Code 1940, § 16-403. *Utterback v. Utterback*, 71 F.Supp. 231, 1947 U.S. Dist. LEXIS 2706 (D.D.C.1947).

If parties agree to be husband and wife in ignorance of, or with knowledge of, impediment to lawful matrimony, removal of that impediment results in common-law marriage between parties if they continue to cohabit and live together as husband and wife. *Taylor v. Taylor*, 233 A.2d 43, 1967 D.C. App. LEXIS 189 (App. 1967).

If parties continue to live together as husband and wife after removal of impediment to lawful matrimony, valid common-law marriage exists. *Lee v. Lee*, 201 A.2d 873, 1964 D.C. App. LEXIS 249 (App. 1964).

Marriage by mutual agreement.

Agreement between man and woman to be husband and wife, consummated by cohabitation, constitutes valid marriage, in absence of statute to contrary. *Hoage v. Murch Bros. Const. Co.*, 50 F.2d 983, 1931 U.S. App. LEXIS 4619 (1931).

Marriage in another jurisdiction.

Congress, legislating for District of Columbia, had power to enact District Code section providing that marriage outside district between persons domiciled therein, if declared illegal by preceding sections because of either party's previous marriage not terminated by

death or divorce decree, shall be deemed illegal and may be decreed void in district as if celebrated therein. D.C. Code 1940, §§ 30-101, 30-105. *Oliver v. Oliver*, 185 F.2d 429, 1950 U.S. App. LEXIS 3301 (C.A.D.C. 1950).

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such district, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. D.C. Code 1940, §§ 16-421, 30-101, 30-105; Code Md.1939, art. 27, § 19. *Oliver v. Oliver*, 185 F.2d 429, 1950 U.S. App. LEXIS 3301 (C.A.D.C. 1950).

A marriage which was void in Massachusetts, where it was celebrated, was void in the District of Columbia. *Rhodes v. Rhodes*, 96 F.2d 715, 1938 U.S. App. LEXIS 3546 (1938).

Operation and effect of annulment.

Where husband obtained annulment of marriage, wife's subsequent marriage before expiration of time for taking appeal from annulment decree held valid (Code, §§ 981, 983a, 1283, 1285 (D.C. Code 1929, T. 14, §§ 1, 3, 81, 82); rule 10, pt. 1, of Court of Appeals). *Tillinghast v. Tillinghast*, 25 F.2d 531, 1928 U.S. App. LEXIS 2997 (1928).

Presumptions and burden of proof.

A marriage proved to have taken place is presumed to be valid until the contrary is proved, and a death or divorce necessary to remove the impediment of a prior marriage is presumed, and while the presumption may be rebutted the rebutting evidence must be strong, distinct, satisfactory, and conclusive. *Harsley v. U.S.*, 187 F.2d 213, 1951 U.S. App. LEXIS 2232 (C.A.D.C. 1951).

Now-deceased wife's second marriage would not be presumed valid, notwithstanding affidavit indicating her intent to live with second man as husband and wife, where first husband presented evidence that first marriage had never been dissolved. D.C. Code 1981, § 30-101. *Berryman v. Thorne*, 700 A.2d 181, 1997 D.C. App. LEXIS 109 (1997).

Legal presumption exists in District of Columbia that where there is more than one marriage the most recent is valid. *Johnson v. Young*, 372 A.2d 992, 1977 D.C. App. LEXIS 454 (1977).

While District of Columbia presumption of the validity of the most recent marriage is not conclusive, it is one of the strongest in law and party attacking such marriage has burden of rebutting presumption by strong, distinct, sat-

isfactory and conclusive evidence. *Johnson v. Young*, 372 A.2d 992, 1977 D.C. App. LEXIS 454 (1977).

Where the question at issue is the existence of marriage, the affirmative must be made out by the party who asserts it. *Brown v. Beckett*, 6 D.C. 253 (D.C.Sup. 1867).

Sufficiency of evidence.

In wife's action for divorce wherein husband sought an annulment on ground of a prior undissolved marriage between wife and person whom husband claimed was still alive but wife claimed was dead, positive testimony of wife and witness and conflicting testimony of handwriting experts established that witness was not the person wife had formerly married as claimed by husband. *Williams v. Williams*, 33 F.Supp. 612, 1940 U.S. Dist. LEXIS 2879 (D.D.C.1940).

Finding of trial court, in support proceeding against man who claimed his marriage to woman instituting proceeding was void because he was legally married to another woman, that there had been no prior valid common-law marriage in District of Columbia between such man and woman with whom he had a void ceremonial marriage was not clearly erroneous, where the evidence was at best contradictory. *Johnson v. Young*, 372 A.2d 992, 1977 D.C. App. LEXIS 454 (1977).

Termination of prior marriage.

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife to deny validity of marriage to second wife. D.C. Code 1951, §§ 30-101 to 30-104. *Sears v. Sears*, 293 F.2d 884, 1961 U.S. App. LEXIS 3982 (C.A.D.C. 1961).

Annulment action was not barred by laches, where evidence supported allegation of complaint that plaintiff did not learn of invalidity of divorce from prior wife until immediately before filing complaint. D.C. Code 1951, §§ 30-101, 30-102. *Sears v. Sears*, 293 F.2d 884, 1961 U.S. App. LEXIS 3982 (C.A.D.C. 1961).

In wife's divorce action where at conclusion of hearing on husband's motion for new trial on ground of invalidity of marriage because of invalidity of wife's prior foreign divorce decree from another, court ordered wife's complaint dismissed on theory that prior marriage had not been terminated and wife's motion to vacate judgment and for new trial was not timely made, overruling of wife's motion could not be considered a determination against the wife of issues of laches and estoppel presented by her motion since it was assumed that the trial court properly overruled the motion on the ground that the motion was too late and did not pass on the merits of the motion. *Fed.Rules Civ.Proc.*

Rule 59 (b, c), 18 U.S.C.; D.C. Code 1940, §§ 30-101, 30-104. *Ruppert v. Ruppert*, 134 F.2d 497, 1942 U.S. App. LEXIS 2447 (1942).

In wife's divorce action, where at conclusion of hearing on husband's motion for new trial on ground of invalidity of wife's prior foreign divorce decree, trial court dismissed complaint on ground that wife's previous marriage had not been terminated but made no finding of fact and stated no conclusions of law upon issues of laches and estoppel of husband to set up invalidity of foreign divorce decree of wife, judgment was reversed and cause remanded for further findings of fact and conclusions of law on such issue. Fed.Rules Civ.Proc. rule 15, 18 U.S.C.; D.C. Code 1940, §§ 30-101, 30-104. *Ruppert v. Ruppert*, 134 F.2d 497, 1942 U.S. App. LEXIS 2447 (1942).

In husband's action for annulment on ground wife's Virginia divorce from first husband was invalid, evidence that wife moved to Virginia from District of Columbia motivated by desire to obtain divorce and after obtaining divorce moved back to District of Columbia, but that during her residence in Virginia she intended to remain for an indefinite period, sustained finding that wife acquired "domicile" in Virginia and that Virginia divorce was valid. Code Va.1924, § 5105. *Goodloe v. Hawk*, 113 F.2d 753, 1940 U.S. App. LEXIS 3449 (1940).

Marriage held invalid in District of Columbia on ground of invalidity of prior divorce of one or both parties (Rev.St.Colo.1908, § 2116). *Friedenwald v. Friedenwald*, 16 F.2d 509, 1926 U.S. App. LEXIS 3892 (1926).

Son, as next friend of father, could not maintain an action for annulment of marriage based on a claim of lack of mental capacity after father's death; father's marriage was voidable, and thus it could not be annulled after his death. In re Estate of Randall, 999 A.2d 51, 2010 D.C. App. LEXIS 354 (2010).

Where common-law marriage of residents of District of Columbia had not been terminated by death or decree of divorce, attempted ceremonial marriage in Maryland between husband and another was void. *Lee v. Lee*, 201 A.2d 873, 1964 D.C. App. LEXIS 249 (App. 1964).

Husband seeking annulment of marriage to second wife with whom he had lived for some 15 years was not barred by laches or estoppel from asserting invalidity of his Mexican mail order divorce from first wife, where Mexican divorce was wholly null and void, marriage to first wife remained undissolved, no appearance had been made in Mexico, no fraudulent misrepresentations as to residence or domicile or otherwise had been practiced upon Mexican court and neither husband, second wife, nor first wife had ever been deceived by Mexican divorce. D.C. Code 1951, § 30-101. *Sears v. Sears*, 166 A.2d 748, 1960 D.C. App. LEXIS 284 (Cr.App. 1960).

Where parties were married in Maryland and husband had a previous undissolved marriage, marriage was void ab initio in District of Columbia without being so decreed. D.C. Code 1951, § 30-101. *Koonin v. Hornsby*, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).

§ 46-401.01. Marriages void ab initio — In general.

The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

(1) Repealed.

(2) Repealed.

(2A) The marriage of a person with a person's grandparent, grandparent's spouse, spouse's grandparent, parent's sibling, parent, step-parent, spouse's parent, child, spouse's child, child's spouse, sibling, child's child, child's child's spouse, spouse's child's child, sibling's child.

(3) The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce.

(Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1283; July 7, 2009, D.C. Law 18-9, § 3(a), 56 DCR 3797; redesignated as § 1283a, Mar. 3. 2010, D.C. Law 18-110, § 2(a), 57 DCR 27.)

Section references. — This section is referenced in § 16-903, § 46-401, and § 46-405.01.

Prior Codifications. — 2001 Ed., § 46-401. 1981 Ed., § 30-101. 1973 Ed., § 30-101.

Effect of amendments. — D.C. Law 18-9 repealed (1) and (2); and added (2A).

Legislative history of Law 18-9. — Law 18-9, the “Jury and Marriage Amendment Act of 2009” was introduced in Council and as-

signed Bill No. 18-10 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively. Signed by the Mayor on May 6, 2009, it was assigned Act No. 18-70 and transmitted to both Houses of Congress for its review. D.C. Law 18-9 became effective on July 7, 2009.

Legislative history of Law 18-110. — For Law 18-110, see notes following § 46-401.

§ 46-402. Marriages void ab initio — Judicial decree.

Any of such marriages may also be declared to have been null and void by judicial decree.

(Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1284.)

Cross references. — Proceedings to annul marriage, see §§ 16-903, 16-904.

Prior Codifications. — 1981 Ed., § 30-102. 1973 Ed., § 30-102.

CASE NOTES

ANALYSIS

In general.
Judicial discretion.

In general.

Court of equity, in determining whether to interpose bar of equitable estoppel in action to annul marriage, must consider all factors of case, parties involved, effect of ultimate decision on third parties not before court, nature of rights sought to be vindicated, and public policy. D.C. Code 1951, §§ 30-101, 30-102. *Sears v. Sears*, 293 F.2d 884, 1961 U.S. App. LEXIS 3982 (C.A.D.C. 1961).

Annulment action was not barred by laches, where evidence supported allegation of complaint that plaintiff did not learn of invalidity of divorce from prior wife until immediately before filing complaint. D.C. Code 1951, §§ 30-101, 30-102. *Sears v. Sears*, 293 F.2d 884, 1961 U.S. App. LEXIS 3982 (C.A.D.C. 1961).

Judicial discretion.

Where boy who was of the age of 16 years and

7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17 and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under District of Columbia statutes the marriage although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. Code Va.1950, § 20-48; D.C. Code 1951, §§ 16-403, 30-101 to 30-104. *Duley v. Duley*, 151 A.2d 255, 1959 D.C. App. LEXIS 262 (Cr.App. 1959).

§ 46-403. Marriages void from date of decree; age of consent.

The following marriages in said District shall be illegal, and shall be void from the time when their nullity shall be declared by decree, namely:

(1) The marriage of a person adjudged to be, or to have been at the time a marriage was performed, unable by reason of mental incapacity to give valid consent to marriage;

(2) Any marriage the consent to which of either party has been procured by force or fraud;

(3) Repealed.

(4) When either of the parties is under the age of consent, which is hereby declared to be 16 years of age.

(Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1285; June 30, 1902, 32 Stat. 543, ch. 1329; Aug. 12, 1937, 50 Stat. 626, ch. 596, § 1; July 22, 1976, D.C. Law 1-75, § 5(d), 23 DCR 1182; Sept. 11, 2008, D.C. Law 17-222, § 2, 55 DCR 8295.)

Cross references. — Proceedings to annul marriage, see §§ 16-903, 16-904.

Prior Codifications. — 1981 Ed., § 30-103. 1973 Ed., § 30-103.

Effect of amendments. — D.C. Law 17-222 rewrite par. (1) and repealed par. (3).

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and trans-

mitted to both Houses of Congress for its review.

Legislative history of Law 17-222. — Law 17-222, the "Marriage Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-533, which was referred to the Committee of Public Safety and Judiciary. The Bill was adopted on first and second readings on June 3, 2008, and July 1, 2008, respectively. Signed by the Mayor on July 16, 2008, it was assigned Act No. 17-442 and transmitted to both Houses of Congress for its review. D.C. Law 17-222 became effective on September 11, 2008.

CASE NOTES

ANALYSIS

Age of consent.

Fraud.

Judicial discretion.

Law governing.

Mental disability.

Operation and effect of annulment.

Uncorroborated evidence.

Age of consent.

The Federal District Court for the District of Columbia had jurisdiction to annul a Maryland marriage contracted by a male between 18 and 21 years of age and a female between 16 and 18 years of age, without consent of parents where domicile of both parties before and after marriage was in the District of Columbia. D.C. Code 1940, §§ 30-103, 30-105, 30-111; Code Md.1939, art. 27, § 363; art. 62, §§ 7, 9. *Hitchens v. Hitchens*, 47 F.Supp. 73, 1942 U.S. Dist. LEXIS 2230 (D.D.C.1942).

Fraud.

It is the purpose of the law of District of Columbia that marriages procured by fraud may be set aside at instance of innocent party. D.C. Code 1940, § 30-103. *Stone v. Stone*, 136 F.2d 761, 1943 U.S. App. LEXIS 3125 (1943).

Where wife suing for annulment of marriage, contracted in Virginia, because of husband's alleged fraudulent concealment of fact that he was suffering with a venereal disease, produced evidence indicating that husband concealed his condition and that wife on being advised that husband had disease immediately separated

and speedily instituted annulment suit, suit was improperly dismissed notwithstanding wife failed to produce Virginia examining physician. Code Va.1942, § 5073a; D.C. Code 1940, §§ 14-308, 30-103. *Stone v. Stone*, 136 F.2d 761, 1943 U.S. App. LEXIS 3125 (1943).

When a woman about to marry conceals from her prospective husband the fact that she is pregnant at the time by another man, the concealment is such a fraud as to justify the annulment of the marriage; but the husband will not be entitled to a decree of annulment on the ground of such fraud, if, after its discovery by him, he has condoned it by continuing to cohabit with his wife. *Lenoir v. Lenoir*, 24 App.D.C. 160, 1904 U.S. App. LEXIS 5314 (1904).

Where husband prior to marriage told wife of his opposition to birth prevention, and wife promised that contraception would not be practiced, but immediately after marriage she refused to have marital relations unless some means were used to prevent conception, and they never had marital relations, husband was entitled to annulment on ground of fraud. D.C. Code 1951, § 30-103, subd. 2. *Zoglio v. Zoglio*, 157 A.2d 627, 1960 D.C. App. LEXIS 162 (Cr.App. 1960).

In suit for annulment of marriage, on ground of fraud, proof must be clear and convincing particularly if suit is undefended. D.C. Code 1951, § 30-103, subd. 2. *Zoglio v. Zoglio*, 157 A.2d 627, 1960 D.C. App. LEXIS 162 (Cr.App. 1960).

Annulment was granted on the basis of fraud where husband failed to disclose his deeply

held religious and cultural views concerning the necessity of a religious marriage in his faith in the Maronite Catholic Church in order for there to be a valid marriage which would include the incidents of having sexual relations and procreation of children. *C.B. v. A.S.*, 118 WLR 2181 (Super. Ct. 1990).

Judicial discretion.

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17 and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under District of Columbia statutes the marriage although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of discretion. Code Va.1950, § 20-48; D.C. Code 1951, §§ 16-403, 30-101 to 30-104. *Duley v. Duley*, 151 A.2d 255, 1959 D.C. App. LEXIS 262 (Cr.App. 1959).

Law governing.

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. D.C. Code 1940, §§ 30-103, 30-105, 30-111. *Hitchens v. Hitchens*, 47 F.Supp. 73, 1942 U.S. Dist. LEXIS 2230 (D.D.C.1942).

Mental disability.

Code D.C. § 986 (D.C. Code 1929, T. 14, § 63), providing that a marriage contract may be declared void when the "marriage was contracted during the lunacy of either party," and section 1285 (see D.C. Code 1929, T. 14, § 3), which provides that the marriage of "a person adjudged to be a lunatic shall be void from the time its nullity is decreed," when construed together, do not mean that a lunatic must be adjudged insane in an independent proceeding before a suit to annul the marriage may be instituted, but the adjudication of lunacy re-

ferred to in section 1285 is adjudication of lunacy in the suit brought for the annulment of the marriage. *Mackey v. Peters*, 22 App.D.C. 341, 1903 U.S. App. LEXIS 5538 (1903).

A proceeding in equity on behalf of a lunatic to annul a marriage contracted by him during his lunacy is properly instituted by his next friend, and not by his committee, under Code D.C. § 1286, but the committee should be made a party defendant to such a proceeding. *Mackey v. Peters*, 22 App.D.C. 341, 1903 U.S. App. LEXIS 5538 (1903).

Son, as next friend of father, could not maintain an action for annulment of marriage based on a claim of lack of mental capacity after father's death; father's marriage was voidable, and thus it could not be annulled after his death. In re Estate of Randall, 999 A.2d 51, 2010 D.C. App. LEXIS 354 (2010).

Woman who knew of man's commitment to mental institution at time of marriage was not entitled to annulment and the annulment should have been granted to the man. D.C. Code §§ 16-907, 30-103, 30-104. *Martin v. Martin*, 240 A.2d 363, 1968 D.C. App. LEXIS 141 (App. 1968).

Operation and effect of annulment.

Where husband obtained annulment of marriage, wife's subsequent marriage before expiration of time for taking appeal from annulment decree held valid (Code, §§ 981, 983a, 1283, 1285 (D.C. Code 1929, T. 14, §§ 1, 3, 81, 82); rule 10, pt. 1, of Court of Appeals). *Tillinghast v. Tillinghast*, 25 F.2d 531, 1928 U.S. App. LEXIS 2997 (1928).

Uncorroborated evidence.

The purpose of Code, § 964 (D.C. Code 1929, T. 14, § 79), providing that no decree of divorce or of annulment of marriage shall be rendered on default without proof, and that no admission contained in the answer of the defendant shall be taken as proof of the facts charged as the ground of the application, but the same shall in all cases be proved by other evidence, is to prohibit divorce or annulment of marriage on the mere statement of one of the parties without corroborative evidence; so that a decree of annulment in a case where the two questions are as to whether the complainant is the father of the defendant's child, and, if not, whether he condoned the fraud on him by continuing cohabitation after its discovery by him, cannot be granted on the uncorroborated testimony of the complainant. *Lenoir v. Lenoir*, 24 App.D.C. 160, 1904 U.S. App. LEXIS 5314 (1904).

§ 46-404. Persons allowed to institute annulment proceedings.

A proceeding to declare the nullity of a marriage may be instituted in the

case of an infant under the age of consent by such infant, through a next friend, or by the parent or guardian of such infant; and in the case of an idiot or lunatic, by next friend. But no such proceedings shall be allowed to be instituted by any person who, being fully capable of contracting a marriage, has knowingly and wilfully contracted any marriage declared illegal by the foregoing sections.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1286; June 30, 1902, 32 Stat. 543, ch. 1329.)

Cross references. — Proceedings to annul marriage, see §§ 16-903, 16-904.

Prior Codifications. — 1981 Ed., § 30-104. 1973 Ed., § 30-104.

CASE NOTES

ANALYSIS

Foreign divorces or dissolutions.

In general.

Jurisdiction.

Next friend.

Persons capable of contracting marriage.

Foreign divorces or dissolutions.

Husband, who obtained mail-order Mexican divorce from first wife, married second wife, and lived with second wife for fifteen years, was estopped in his annulment action against second wife to deny validity of marriage to second wife. D.C. Code 1951, §§ 30-101 to 30-104. *Sears v. Sears*, 293 F.2d 884, 1961 U.S. App. LEXIS 3982 (C.A.D.C. 1961).

Where two couples obtained Mexican divorces which were invalid because none of four parties was domiciled in Mexico, two of them merely spent a few hours in that country in year when divorces were obtained, and absent spouses merely executed powers of attorney but entered no appearance in Mexican court, husband, who later married the other's supposed ex-wife, was estopped from challenging Mexican decrees on jurisdictional grounds in suit to annul his second marriage. *Clagett v. King*, 308 A.2d 245, 1973 D.C. App. LEXIS 330 (1973).

In general.

Woman who knew of man's commitment to mental institution at time of marriage was not entitled to annulment and the annulment should have been granted to the man. D.C. Code §§ 16-907, 30-103, 30-104. *Martin v. Martin*, 240 A.2d 363, 1968 D.C. App. LEXIS 141 (App. 1968).

Husband was not estopped under statute from seeking annulment of marriage on ground that, at time of marriage, his divorce from prior marriage had not become legally effective. D.C. Code 1961, § 30-104. *Taylor v. Taylor*, 233 A.2d 43, 1967 D.C. App. LEXIS 189 (App. 1967).

Jurisdiction.

Where minor, 19 years of age contracted a

marriage in Maryland and thereafter discovered that husband had a previous undissolved marriage, minor could not acquire a domicile by choice in District of Columbia either before or after her marriage and Municipal Court for the District of Columbia did not have jurisdiction to declare marriage a nullity although decree sought was available in her domiciliary state and in state where marriage was performed. Code Md.1951, art. 16, § 31; D.C. Code 1951, § 30-104; Code Va.1950, §§ 20-43, 20-89. *Koonin v. Hornsby*, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).

Next friend.

"Next friend" in connection with proceedings in equity does not mean the committee or trustee of a lunatic, or the guardian of a minor, or the husband of a married woman, but one who, without being a regularly appointed guardian, acts for the benefit of an infant, a married woman, or other person not sui juris. *Mackey v. Peters*, 22 App.D.C. 341, 1903 U.S. App. LEXIS 5538 (1903).

A proceeding in equity on behalf of a lunatic to annul a marriage contracted by him during his lunacy is properly instituted by his next friend, and not by his committee, under Code D.C. § 1286, but the committee should be made a party defendant to such a proceeding. *Mackey v. Peters*, 22 App.D.C. 341, 1903 U.S. App. LEXIS 5538 (1903).

Procedure of bringing suit for annulment of a marriage by a minor in name of a next friend is proper where minor is under age of consent; however, where female minor is over age of 18, suit should be brought in minor's name. D.C. Code 1951, § 30-104. *Koonin v. Hornsby*, 140 A.2d 309, 1958 D.C. App. LEXIS 306 (Cr.App. 1958).

Persons capable of contracting marriage.

In statute providing that no annulment proceedings can be instituted by person who, being "fully capable of contracting a marriage," has

knowingly and willfully contracted any marriage declared illegal by statutes, quoted phrase refers to person with intrinsic legal capacity and does not allude to extrinsic impediments to valid marriage. D.C. Code 1951, § 30-104. *Sears v. Sears*, 293 F.2d 884, 1961 U.S. App. LEXIS 3982 (C.A.D.C. 1961).

Where husband's marriage to first wife remained undissolved and husband's Mexican mail order divorce from first wife was wholly null and void and husband had married a

second wife, husband was not "capable of contracting marriage" within statute providing that proceeding to nullify marriage cannot be maintained by person who, being capable of contracting marriage, has entered into illegal marriage, and consequently husband could sue for annulment of second marriage. D.C. Code 1951, §§ 30-101 to 30-104. *Sears v. Sears*, 166 A.2d 748, 1960 D.C. App. LEXIS 284 (Cr.App. 1960).

§ 46-405. Illegal marriages entered into in another jurisdiction.

If any marriage declared illegal by the foregoing sections shall be entered into in another jurisdiction by persons having and retaining their domicile in the District of Columbia, such marriage shall be deemed illegal, and may be decreed to be void in said District in the same manner as if it had been celebrated therein.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287.)

Prior Codifications. — 1981 Ed., § 30-105. 1973 Ed., § 30-105.

CASE NOTES

ANALYSIS

Estoppel.

Jurisdiction.

Law governing.

Legislative power of Congress.

Termination of prior marriage.

Estoppel.

A divorced husband, marrying another woman in Maryland while both of them were domiciled in District of Columbia within six months after entry of divorce decree in court of such district, was not estopped to plead invalidity of second marriage under District Code as ground for vacation of order against him for support of second wife's minor child, whose paternity he denied, especially in view of statutory provision that nullity of bigamous marriage may be shown in any collateral proceeding. D.C. Code 1940, §§ 16-421, 30-101, 30-105; Code Md.1939, art. 27, § 19. *Oliver v. Oliver*, 185 F.2d 429, 1950 U.S. App. LEXIS 3301 (C.A.D.C. 1950).

Jurisdiction.

The Federal District Court for the District of Columbia had jurisdiction to annul a Maryland marriage contracted by a male between 18 and 21 years of age and a female between 16 and 18 years of age, without consent of parents where domicile of both parties before and after marriage was in the District of Columbia. D.C.

Code 1940, §§ 30-103, 30-105, 30-111; Code Md.1939, art. 27, § 363; art. 62, §§ 7, 9. *Hitchens v. Hitchens*, 47 F.Supp. 73, 1942 U.S. Dist. LEXIS 2230 (D.D.C.1942).

Law governing.

Marriage valid by law of state in which solemnized will be recognized as valid in every other jurisdiction, unless polygamous, incestuous, or otherwise declared void by statute. *Loughran v. Loughran*, 54 S.Ct. 684, 1934 U.S. LEXIS 708 (U.S. Dist. Col. 1934).

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. D.C. Code 1940, §§ 30-103, 30-105, 30-111. *Hitchens v. Hitchens*, 47 F.Supp. 73, 1942 U.S. Dist. LEXIS 2230 (D.D.C.1942).

Legislative power of Congress.

Congress, legislating for District of Columbia, had power to enact District Code section providing that marriage outside district between persons domiciled therein, if declared illegal by preceding sections because of either party's previous marriage not terminated by death or divorce decree, shall be deemed illegal and may be decreed void in district as if cele-

brated therein. D.C. Code 1940, §§ 30-101, 30-105. *Oliver v. Oliver*, 185 F.2d 429, 1950 U.S. App. LEXIS 3301 (C.A.D.C. 1950).

Termination of prior marriage.

A ceremonial marriage in Maryland between District of Columbia residents within six months after date of District of Columbia court's decree, granting the man's former wife a divorce, was void ab initio as violating District Code and Maryland Criminal Code. D.C. Code

1940, §§ 16-421, 30-101, 30-105; Code Md.1939, art. 27, § 19. *Oliver v. Oliver*, 185 F.2d 429, 1950 U.S. App. LEXIS 3301 (C.A.D.C. 1950).

Where common-law marriage had not been terminated by death or decree of divorce, attempted ceremonial marriage in Maryland of common-law husband to another woman was void in District of Columbia. D.C. Code 1961, §§ 30-101, 30-105. *Lee v. Lee*, 201 A.2d 873, 1964 D.C. App. LEXIS 249 (App. 1964).

§ 46-405.01. Recognition of marriages from other jurisdictions.

A marriage legally entered into in another jurisdiction between 2 persons of the same sex that is recognized as valid in that jurisdiction, that is not expressly prohibited by §§ 46-401.01 through 46-404, and has not been deemed illegal under § 46-405, shall be recognized as a marriage in the District.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1287a, as added July 7, 2009, D.C. Law 18-9, § 3(b), 56 DCR 3797; Mar. 3, 2010, D.C. Law 18-110, § 2(c), 57 DCR 27.)

Effect of amendments. — D.C. Law 18-110 substituted “§§ 46-401.01” for “§§ 46-401”.

Legislative history of Law 18-9. — For Law 18-9, see notes following § 46-401.

Legislative history of Law 18-110. — For Law 18-110, see notes following § 46-401.

§ 46-406. Persons authorized to celebrate marriages.

(a) For the purposes of this section, the term:

(1) “Religious” includes or pertains to a belief in a theological doctrine, a belief in and worship of a divine ruling power, a recognition of a supernatural power controlling man’s destiny, or a devotion to some principle, strict fidelity or faithfulness, conscientiousness, pious affection, or attachment.

(2) “Society” means a voluntary association of individuals for religious purposes.

(b) For the purpose of preserving the evidence of marriages in the District of Columbia, every minister of any religious society approved or ordained according to the ceremonies of his religious society, whether his residence is in the District of Columbia or elsewhere in the United States or the territories, may be authorized by any judge of the Superior Court of the District of Columbia to celebrate marriages in the District of Columbia. Marriages may also be performed by any judge or justice of any court of record; provided, that marriages of any religious society which does not by its own custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such religious society, the license in such case to be issued to, and returns to be made by, a person appointed by such religious society for that purpose. The Clerk of the Superior Court of the District of Columbia or such deputy clerks of the Court as may, in

writing, be designated by the Clerk and approved by the Chief Judge, may celebrate marriages in the District of Columbia.

(c) No priest, imam, rabbi, minister, or other official of any religious society who is authorized to solemnize or celebrate marriages shall be required to solemnize or celebrate any marriage.

(d) Each religious society has exclusive control over its own theological doctrine, teachings, and beliefs regarding who may marry within that particular religious society's faith.

(e)(1) Notwithstanding any other provision of law, a religious society, or a nonprofit organization that is operated, supervised, or controlled by or in conjunction with a religious society, shall not be required to provide services, accommodations, facilities, or goods for a purpose related to the solemnization or celebration of a marriage, or the promotion of marriage through religious programs, counseling, courses, or retreats, that is in violation of the religious society's beliefs.

(2) A refusal to provide services, accommodations, facilities, or goods in accordance with this subsection shall not create any civil claim or cause of action, or result in a District action to penalize or withhold benefits from the religious society or nonprofit organization that is operated, supervised, or controlled by or in conjunction with a religious society.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a), (b); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Jan. 26, 1982, D.C. Law 4-60, § 2, 28 DCR 4768; Mar. 3, 2010, D.C. Law 18-110, § 2(d), 57 DCR 27.)

Section references. — This section is referred to in § 46-412.

Prior Codifications. — 1981 Ed., § 30-106. 1973 Ed., § 30-106.

Effect of amendments. — D.C. Law 18-110 added subsecs. (c), (d), and (e).

Legislative history of Law 4-60. — Law 4-60 was introduced in Council and assigned Bill No. 4-251, which was referred to the Com-

mittee on the Judiciary. The Bill was adopted on first and second readings on September 15, 1981, and September 29, 1981, respectively. Signed by the Mayor on October 30, 1981, it was assigned Act No. 4-106 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-110. — For Law 18-110, see notes following § 46-401.

CASE NOTES

License.

The minister who marries a couple is not put on inquiry as to whether the license has been lawfully issued, and is under no obligation to do

anything more than satisfy himself that the license is in proper form and duly authenticated. *Payne v. Payne*, 295 F. 970, 1924 U.S. App. LEXIS 3263 (1924).

§ 46-407. Celebration of marriage by unauthorized persons. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1289; Apr. 29, 2004, D.C. Law 15-154, § 3(m), 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 30-107.
1973 Ed., § 30-107.

Legislative history of Law 15-154. — Law 15-154, the “Elimination of Outdated Crimes Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-79, which was referred to Committee on the Judiciary. The

Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-255 and transmitted to both Houses of Congress for its review. D.C. Law 15-154 became effective on April 29, 2004.

§ 46-408. Celebration of marriage without license. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 29, 2004, D.C. Law 15-154, § 3(n), 50 DCR 10996.)

Prior Codifications. — 1981 Ed., § 30-108.
1973 Ed., § 30-108.

Legislative history of Law 15-154. — For Law 15-154, see notes following § 46-407.

§ 46-409. Issuance of license — Waiting period.

A license to marry shall not be issued until 3 days have elapsed from date of application for issuance of said license.

(Aug. 12, 1937, 50 Stat. 626, ch. 596, § 2.)

Cross references. — Waiver of this section, see § 46-418.

Prior Codifications. — 1981 Ed., § 30-109.
1973 Ed., § 30-109.

§ 46-410. Issuance of license — Duty of Clerk; false swearing by applicant deemed perjury.

It shall be the duty of the Clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names and ages of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the Clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 7, 1977, D.C. Law 1-107, title I, § 113(a), 23 DCR 8737.)

Prior Codifications. — 1981 Ed., § 30-110.
1973 Ed., § 30-110.

Legislative history of Law 1-107. — Law 1-107 was introduced in Council and assigned

Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976 and September 15, 1976, and second readings on November 22, 1976 and

December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

CASE NOTES

Legislative intent.

When the City Council passed the Marriage and Divorce Act, it contemplated that the parties subject to such legislation would be a man

and a woman—not persons of the same sex. *Dean v. District of Columbia*, 120 WLR 769 (Super. Ct. 1991).

§ 46-411. Consent of parent or guardian.

If any person intending to marry and seeking a license therefor shall be under 18 years of age, and shall not have been previously married, the said Clerk shall not issue such license unless a parent, or, if there be neither father nor mother, the guardian, if there be such, shall consent to such proposed marriage, either personally to the Clerk, or by an instrument in writing attested by a witness and proved to the satisfaction of the Clerk.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1292; July 22, 1976, D.C. Law 1-75, § 5(a), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 32, 23 DCR 2544.)

Prior Codifications. — 1981 Ed., § 30-111. 1973 Ed., § 30-111.

Legislative history of Law 1-75. — For legislative history of D.C. Law 1-75, see Historical and Statutory Notes following § 46-403.

Legislative history of Law 1-87. — Law 1-87 was introduced in Council and assigned

Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Judicial discretion.

Jurisdiction.

Law governing.

Judicial discretion.

Where boy who was of the age of 16 years and 7 months and girl who was of the age of 15 years and 10 months were domiciled in District of Columbia, and boy obtained father's consent to marry by falsely representing that girl was pregnant and obtained Virginia marriage license by falsely representing that he was age 18 and that she was age 17 and after their marriage in Virginia they lived together in District of Columbia in their own home as man and wife for about six months and then separated, under District of Columbia statutes the marriage although forbidden, was not void ab initio, but was merely void when declared so by court decree, and court had judicial discretion to refuse to grant annulment, and under the circumstances such refusal was not abuse of

discretion. Code Va.1950, § 20-48; D.C. Code 1951, §§ 16-403, 30-101 to 30-104. *Duley v. Duley*, 151 A.2d 255, 1959 D.C. App. LEXIS 262 (Cr.App. 1959).

Jurisdiction.

The Federal District Court for the District of Columbia had jurisdiction to annul a Maryland marriage contracted by a male between 18 and 21 years of age and a female between 16 and 18 years of age, without consent of parents where domicile of both parties before and after marriage was in the District of Columbia. D.C. Code 1940, §§ 30-103, 30-105, 30-111; Code Md.1939, art. 27, § 363; art. 62, §§ 7, 9. *Hitchens v. Hitchens*, 47 F.Supp. 73, 1942 U.S. Dist. LEXIS 2230 (D.D.C.1942).

Law governing.

There being no "public policy" in the District of Columbia which declares marriages contracted by females over 16 but under 18 or males over 18 but under 21 without consent of their parents to be void, the determinant of the

right to annulment of a marriage contracted under such circumstances was the law as it prevailed in state where marriage occurred. D.C. Code 1940, §§ 30-103, 30-105, 30-111. Hitchens v. Hitchens, 47 F.Supp. 73, 1942 U.S. Dist. LEXIS 2230 (D.D.C1942).

§ 46-412. Form of license; return; coupons.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by § 46-406 to perform or witness the marriage ceremony and shall be in the following form:
Number

To, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between, of, and, of, and having done so, you are commanded to make return of the same to the Clerk's Office of the Superior Court of the District of Columbia within 10 days under a penalty of \$50 for default therein.

Witness my hand and seal of said Court this day of, anno Domini

..... Clerk.
By Assistant Clerk.

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within 10 days from the time of said marriage, and shall be in the following form:

Number
I,, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of and, named therein, on the day of, at, in said District.

A 2nd coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number
I hereby certify that on this day of, at, and were by (or before) me united in marriage in accordance with the license issued by the Clerk of the Superior Court of the District of Columbia.

Name
Residence

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 13(a); July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 30-112. 1973 Ed., § 30-112.

§ 46-413. Failure to make return.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of \$50 upon conviction of said failure upon information in the Superior Court of the District of Columbia.

(Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a).)

Prior Codifications. — 1981 Ed., § 30-113. 1973 Ed., § 30-113.

§ 46-414. Record books.

The Clerk of the said Court shall provide a record book in his office, consisting of applications and licenses in blank, to be filled up by him with the names and residences of the parties for whose marriage any license may have been issued, said applications and licenses to be numbered consecutively from 1 upward, and also a record book in which shall be recorded, in the order of their numbers, the certificates of the minister or other persons authorized, upon their return to said office, corresponding to said record book of licenses issued, and a copy of any license and certificate of marriage so kept and recorded, certified by the Clerk under his hand and seal, shall be competent evidence of the marriage.

(Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1295.)

Cross references. — False or fictitious transcript of any record of marriage, penalties, see §§ 7-220, 7-225.

Fees for copies of record, see § 1-301.01.
Prior Codifications. — 1981 Ed., § 30-114.
1973 Ed., § 30-114.

§ 46-415. Issue of marriages of colored persons. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1394, ch. 854, § 1297; Mar. 13, 2004, D.C. Law 15-105, § 11, 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 30-115. 1973 Ed., § 30-117.

§ 46-416. Public inspection and examination of applications.

All applications for marriage licenses shall be open to inspection as public records, except as limited by § 46-416.01. All such applications upon which licenses have not yet been issued shall be kept together in a separate file readily accessible to public examination.

(Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 1; Apr. 3, 2001, D.C. Law 13-269, § 107(a), 48 DCR 1270.)

Section references. — This section is referred to in § 46-421.

Prior Codifications. — 1981 Ed., § 30-116. 1973 Ed., § 30-118.

Effect of amendments. — D.C. Law 13-269 substituted "records, except as limited by § 46-416.01" for "records".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 6(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 106(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 106(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 6(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 6(a) of the Child Support and Welfare Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 6(a) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 6(a) of the Child Support and Welfare Reform Compliance Legislative Review Emer-

gency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 6(a) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 106(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 106(a) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 106(a) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 106(a) and (b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 107(a) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-416.01. Social security numbers to be filed with application.

(a) Each applicant for a marriage license shall record on the application each social security number assigned to the applicant. If the applicants' social security numbers are not recorded on the face of the license, the agency shall keep on file each applicant's social security number and each applicant shall be so advised.

(b) The social security number shall be disclosed only:

(1) For a purpose directly related to the establishment of paternity, or the establishment, modification, or enforcement of a support order; and

(2) To the applicant, the other spouse, the child of the applicant or spouse, their attorneys of record, the IV-D agency, a District agency that has entered into a cooperative agreement with the IV-D agency, the IV-D agency of another

state, or a private entity with which the District has contracted regarding paternity and child support services.

(Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 1a, as added Apr. 3, 2001, D.C. Law 13-269, § 107(b), 48 DCR 1270.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 6(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 106(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary addition of section, see § 6(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary addition of section, see § 6(b) of the Child Support and Welfare Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 6(b) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 6(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 6(b) of the Child Support and Welfare Reform Compliance Second Congress-

sional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary (90-day) addition of section, see § 106(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) addition of section, see § 106(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) addition of section, see § 106(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) addition of section, see § 106(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) addition of section, see § 107(b) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 46-201.

§ 46-417. Premarital blood tests; statement regarding test to be filed with application. [Repealed].

Repealed.

(Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 2; Sept. 11, 2008, D.C. Law 17-222, § 3(a), 55 DCR 8295.)

Prior Codifications. — 1981 Ed., § 30-117. 1973 Ed., § 30-119.

Legislative history of Law 17-222. — For Law 17-222, see notes following § 46-403.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 46-418. Waiver of certain requirements.

If a judge of the Superior Court of the District of Columbia determines that public policy or the physical condition of either of the persons applying for a marriage license requires the intended marriage to be celebrated without delay, he may waive the provisions of § 46-409, and a license may be issued without regard to such sections.

(Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 3; July 7, 1967, 81 Stat. 122, Pub. L. 90-53, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a); Sept. 11, 2008, D.C. Law 17-222, § 3(b), 55 DCR 8295.)

Section references. — This section is referred to in § 46-421.

Prior Codifications. — 1981 Ed., § 30-118. 1973 Ed., § 30-120.

Effect of amendments. — D.C. Law 17-222

substituted “§ 46-409” for “§§ 46-409 and 46-417”.

Legislative history of Law 17-222. — For Law 17-222, see notes following § 46-403.

§ 46-419. Financial inability to pay for blood test or required statement [Repealed].

Repealed.

(Oct. 15, 1966, 80 Stat. 959, Pub. L. 89-682, § 4; Sept. 11, 2008, D.C. Law 17-222, § 3(c), 55 DCR 8295.)

Prior Codifications. — 1981 Ed., § 30-119. 1973 Ed., § 30-121.

Legislative history of Law 17-222. — For Law 17-222, see notes following § 46-403.

§ 46-420. Confidential character of blood test information.

Any information obtained from any laboratory blood test required under § 46-417 [repealed] shall be regarded as confidential by each person, agency, or committee who obtains, transmits, or receives such information.

(Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, § 5.)

Section references. — This section is referred to in § 46-421.

Prior Codifications. — 1981 Ed., § 30-120. 1973 Ed., § 30-122.

§ 46-421. Violations; prosecutions.

Whoever: (1) knowingly divulges, other than in accordance with the provisions of §§ 46-416 to 46-421, any information, derived from the laboratory blood test required by § 46-417 [repealed], relating to any person suffering, or suspected to be suffering from, syphilis; (2) knowingly misrepresents any fact called for by the statement required by such section, or knowingly falsifies any material fact in connection with the laboratory blood test required by such section; (3) knowingly issues a marriage license without having received the statement required under such section or an order of the Superior Court of the District of Columbia issued under § 46-418; or (4) otherwise fails to comply with any other provision of §§ 46-416 to 46-421; shall be imprisoned for not more than 6 months, or fined not more than \$250, or both. Prosecutions for

violations of this section shall be conducted by the Attorney General for the District of Columbia for the District of Columbia.

(Oct. 15, 1966, 80 Stat. 960, Pub. L. 89-682, § 6; July 7, 1967, 81 Stat. 122, Pub. L. 90-53, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, § 155(a); Apr. 13, 2005, D.C. Law 15-354, § 72, 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 30-121.
1973 Ed., § 30-123.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 46-226.03.

Effect of amendments. — D.C. Law 15-354 substituted “Attorney General for the District of Columbia” for “Corporation Counsel”.

CHAPTER 5. PREMARITAL AGREEMENTS.

Sec.	Sec.
46-501. Definitions.	46-506. Enforcement.
46-502. Formalities.	46-507. Void marriage or domestic partnership.
46-503. Content.	46-508. Limitation of actions.
46-504. Effect of marriage or domestic partnership.	46-509. Applicability.
46-505. Amendment; revocation.	46-510. Application and construction.

§ 46-501. Definitions.

For the purposes of this chapter, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(3) "Premarital agreement" means an agreement between prospective spouses or prospective domestic partners made in contemplation of marriage or domestic partnership and to be effective upon marriage or domestic partnership.

(4) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

(Feb. 9, 1996, D.C. Law 11-82, § 2, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(a), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 30-141.
Effect of amendments. — D.C. Law 16-79 rewrote the section.

Legislative history of Law 11-82. — Law 11-82, the "Uniform Premarital Agreement Act of 1995," was introduced in Council and assigned Bill No. 11-227, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-159 and transmitted to both Houses of Congress for its review. D.C. Law 11-82 became effective on February 9, 1996.

Legislative history of Law 16-79. — Law 16-79, the "Domestic Partnership Equality Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Premarital Agreement Act.

§ 46-502. Formalities.

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

(Feb. 9, 1996, D.C. Law 11-82, § 3, 42 DCR 6770.)

Prior Codifications. — 1981 Ed., § 30-142.
Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Premarital Agreement Act.

§ 46-503. Content.

(a) Parties to a premarital agreement may contract with respect to:

- (1) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (2) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) The disposition of property upon separation, marital dissolution, annulment, termination of a domestic partnership pursuant to § 32-702(d), death, or the occurrence or nonoccurrence of any other event;
- (4) The modification or elimination of spousal or domestic partner support;
- (5) The making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (6) The ownership rights in, and disposition of, the death benefit from a life insurance policy;
- (7) The choice of law governing the construction of the agreement; and
- (8) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

(Feb. 9, 1996, D.C. Law 11-82, § 4, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(b), 53 DCR 1035; Sept. 12, 2008, D.C. Law 17-231, § 40(a), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 30-143.

Effect of amendments. — D.C. Law 16-79, in subsec. (a)(3), substituted “annulment, termination of a domestic partnership under § 32-702,” for “annulment,”; and in subsec. (a)(4), substituted “spousal or domestic partner support” for “spousal support”.

D.C. Law 17-231, in subsec. (a)(3), substituted “pursuant to § 32-702(d),” for “under § 32-702,”.

Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 46-501.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

Editor’s notes. — Uniform Law: This section is based upon § 3 of the Uniform Premarital Agreement Act.

§ 46-504. Effect of marriage or domestic partnership.

A premarital agreement becomes effective upon marriage or the registration of a domestic partnership under § 32-702.

(Feb. 9, 1996, D.C. Law 11-82, § 5, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(c), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 30-144.

Effect of amendments. — D.C. Law 16-79 rewrote section which had read as follows: “A

premarital agreement becomes effective upon marriage.”

Legislative history of Law 11-82. — For

legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Premarital Agreement Act.

§ 46-505. Amendment; revocation.

After marriage or the registration of a domestic partnership under § 32-702, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

(Feb. 9, 1996, D.C. Law 11-82, § 6, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(d), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 30-145.

Effect of amendments. — D.C. Law 16-79 substituted "After marriage or the registration of a domestic partnership under § 32-702," for "After marriage."

Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Premarital Agreement Act.

§ 46-506. Enforcement.

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) That party did not execute the agreement voluntarily; or

(2) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal or domestic partner support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation, marital dissolution, or termination of a domestic partnership pursuant to § 32-702(d), a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

(Feb. 9, 1996, D.C. Law 11-82, § 7, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(e), 53 DCR 1035; Sept. 12, 2008, D.C. Law 17-231, § 40(b), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 30-146.

Effect of amendments. — D.C. Law 16-79

rewrote subsec. (b) which had read as follows: “(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes 1 party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.”

D.C. Law 17-231, in subsec. (b), substituted “pursuant to § 32-702(d),” for “under § 32-702.”

Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 46-501.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 46-503.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Premarital Agreement Act.

§ 46-507. Void marriage or domestic partnership.

If a marriage or domestic partnership is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result, unless the agreement expressly provides that it shall be enforceable in the event that the marriage or domestic partnership is later determined to be void.

(Feb. 9, 1996, D.C. Law 11-82, § 8, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(f), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 30-147.

Effect of amendments. — D.C. Law 16-79, in section heading, substituted “marriage or domestic partnership” for “marriage”; and substituted “marriage or domestic partnership” for “marriage”.

Legislative history of Law 11-82. — For

legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Premarital Agreement Act.

§ 46-508. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage or domestic partnership of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

(Feb. 9, 1996, D.C. Law 11-82, § 9, 42 DCR 6770; Apr. 4, 2006, D.C. Law 16-79, § 8(g), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 30-148.

Effect of amendments. — D.C. Law 16-79 substituted “marriage or domestic partnership” for “marriage”.

Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Premarital Agreement Act.

§ 46-509. Applicability.

This chapter applies to any premarital agreement executed on or after February 9, 1996.

(Feb. 9, 1996, D.C. Law 11-82, § 10, 42 DCR 6770.)

Prior Codifications. — 1981 Ed., § 30-149.

Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Premarital Agreement Act.

§ 46-510. Application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Feb. 9, 1996, D.C. Law 11-82, § 11, 42 DCR 6770.)

Prior Codifications. — 1981 Ed., § 30-150.

Legislative history of Law 11-82. — For legislative history of D.C. Law 11-82, see Historical and Statutory Notes following § 46-501.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Premarital Agreement Act.

CHAPTER 6. PROPERTY RIGHTS.

Sec.

46-601. Rights enumerated.

§ 46-601. Rights enumerated.

(a) For the purposes of this section, the term:

(1) “Domestic partner” shall have the same meaning as provided in § 32-701(3).

(2) “Domestic partnership” shall have the same meaning as provided in § 32-701(4).

(b)(1) The fact that a person is or was married or registered as a domestic partner shall not impair the rights and responsibilities of such person, which rights and responsibilities are hereby granted or confirmed, to acquire from anyone, and to hold and dispose of, in any manner, as his or hers, property of any kind, or to accept and be bound by any covenant or agreement relating to any property or debt, or to contract or engage in any trade, occupation, or business arrangement or in any civil litigation of any sort (whether in contract, tort, or otherwise) with or against anyone, including such person’s spouse or domestic partner, to the same extent as an unmarried person.

(2) A person’s spouse or domestic partner and the property of a person’s spouse or domestic partner shall not be liable because of any contract or tort by that person in which the spouse or domestic partner has not directly or indirectly participated, except that both spouses or domestic partners shall be liable on any debt, contract, or engagement entered into by either of them during their marriage or the term of the domestic partnership for necessities for either of them or for their dependent children.

(3) Except as otherwise provided by law, a married minor shall be subject to the same disabilities, including the requirement for appointment of a guardian of the minor’s estate, as an unmarried minor.

(c) This section shall not be deemed to affect the law relating to ownership of property held by the spouses, or the domestic partners, as tenants by the entirety, inheritance of property, actions for loss of consortium, family relations, or, except as to necessities purchased during marriage or domestic partnership, obligations for marital support.

(d) A tenancy by the entirety may be created in any conveyance of personal property to spouses or to domestic partners.

(Mar. 3, 1901, 31 Stat. 1374, ch. 854, § 1154; Aug. 31, 1957, 71 Stat. 562, Pub. L. 85-244, § 8; Sept. 14, 1961, 75 Stat. 517, Pub. L. 87-246, § 6; July 22, 1976, D.C. Law 1-75, § 5(b), 23 DCR 1182; Oct. 1, 1976, D.C. Law 1-87, § 33(a), 23 DCR 2544; Apr. 27, 2001, D.C. Law 13-292, § 802, 48 DCR 2087; Mar. 14, 2007, D.C. Law 16-270, § 2, 54 DCR 851; July 18, 2008, D.C. Law 18-33, § 6(b), 56 DCR 4269.)

Cross references. — Abolition of curtesy and dower, see § 19-102.

Devises and bequests to surviving spouse and effects on other rights, see § 19-112.

Prior Codifications. — 1981 Ed., § 30-201. 1973 Ed., § 30-201.

Effect of amendments. — D.C. Law 13-292 deleted “dower,” following “relating to” in the last sentence.

D.C. Law 16-270 rewrote the section which had read as follows: “The fact that a person is or was married shall not, after October 1, 1976, impair the rights and responsibilities of such person, which are hereby granted or confirmed, to acquire from anyone, and to hold and dispose of, in any manner, as his or hers, property of any kind, or to accept and be bound by any covenant or agreement relating to any property or debt, or to contract or engage in any trade, occupation or business arrangement or in any civil litigation of any sort (whether in contract, tort or otherwise) with or against anyone including such person’s spouse, to the same extent as an unmarried person, and neither the spouse of such person nor the spouse’s property shall be liable because of any contract or tort by such person in which the spouse has not directly or indirectly participated, except that both spouses shall be liable on any debt, contract or engagement entered into by either of them during their marriage for necessities for either of them or for their dependent children. A married minor shall be subject to the same disabilities, including the requirement for appointment of a guardian of the minor’s estate, as an unmarried minor, except as otherwise provided by law. This section shall not be deemed to affect the law relating to ownership of property held by the husband and wife as tenants by the entireties, inheritance of property, actions for loss of consortium, family relations, or, except as to necessities purchased during marriage, obligations for marital support.”

D.C. Law 18-33, in subsec. (c), substituted “spouses, or the domestic partners,” for “spouses,” and “marriage or domestic partnership” for “marriage”; and added subsec. (d).

Legislative history of Law 1-75. — Law 1-75 was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-87. — Law 1-87 was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-292. — Law 13-292, the “Omnibus Trusts and Estates Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Legislative history of Law 16-270. — Law 16-270, the “Property Interest Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-671, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-626 and transmitted to both Houses of Congress for its review. D.C. Law 16-270 became effective on March 14, 2007.

Legislative history of Law 18-33. — Law 18-33, the “Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009,” was introduced in Council and assigned Bill No. 18-66, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively. Signed by the Mayor on May 21, 2008, it was assigned Act No. 18-66 and transmitted to both Houses of Congress for its review. D.C. Law 18-33 became effective on July 18, 2008.

CASE NOTES

ANALYSIS

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Contracts to sell.

Good faith reliance by persons contracting with husband to purchase realty owned by spouses as tenants by entireties on his promise to have a committee appointed to accept contract for his wife, who had been adjudged of unsound mind, did not entitle purchasers of

possession of property after notice to them by husband that he had decided not to sell property and that no committee would be appointed for wife. D.C. Code 1951, § 30-201. *Deschenes v. McFerren*, 125 A.2d 386, 1956 D.C. App. LEXIS 231 (Cr.App. 1956).

Where husband's contract to sell realty owned by spouses as tenants by entireties was not accepted on behalf of wife, who had been adjudged of unsound mind, purchasers were liable to spouses for reasonable rental value of purchasers' use and occupancy of property after being notified by husband that he had decided not to sell property and that no committee would be appointed for wife, as he had promised purchasers, though they received permission from husband to enter into possession of property. D.C. Code 1951, § 30-201. *Deschenes v. McFerren*, 125 A.2d 386, 1956 D.C. App. LEXIS 231 (Cr.App. 1956).

Disposition by minor.

Statute providing that no disposition of realty or personalty of married woman under 21 years of age or any portions thereof, by deed, mortgage, bill of sale, or other conveyance shall be valid if made by married woman under 21 years of age is modified by statute dealing with joint account of husband and wife in bank or other institutions such as building and loan association. D.C. Code 1961, §§ 26-201, 30-201. *Williams v. Williams*, 346 F.2d 808, 1965 U.S. App. LEXIS 5893 (C.A.D.C. 1965).

In general.

The Married Woman's Property Statutes have changed the common-law principles of marital unity so that the husband cannot now assert an exclusive right to the rents and profits or divest the wife of her share directly by conveyance or indirectly by execution. D.C. Code 1940, § 30-201 et seq. *Fairclaw v. Forrest*, 130 F.2d 829, 1942 U.S. App. LEXIS 3204 (1942).

Under the Married Woman's Property Statutes, each spouse is entitled to the enjoyment and benefits of the whole property held by entirety and neither has a separate estate therein which may be subjected to a conveyance or execution. D.C. Code 1940, § 30-201 et seq. *Fairclaw v. Forrest*, 130 F.2d 829, 1942 U.S. App. LEXIS 3204 (1942).

Under Married Woman's Property Statute, husband cannot assert exclusive right to rents and profits from property owned by spouses as tenants by entireties or divest wife of her share thereof either directly by conveyance or indirectly by execution, so that neither may convey any interest in property without other's authority or consent, nor perform any act or make any contract respecting property which would prejudicially affect other spouse. D.C. Code 1951,

§ 30-201. *Deschenes v. McFerren*, 125 A.2d 386, 1956 D.C. App. LEXIS 231 (Cr.App. 1956).

Liability for withdrawal of funds.

Where substantial sums earned by minor wife were allegedly turned over by her to husband and were deposited with building and loan association in joint account in names of husband and wife, and on estrangement of husband and wife, husband withdrew balance in joint account and deposited it in new joint account in names of himself and his mother, association was not liable to wife on ground that association could not permit funds to be withdrawn by husband due to status of wife as minor. D.C. Code 1961, §§ 26-201, 30-201. *Williams v. Williams*, 346 F.2d 808, 1965 U.S. App. LEXIS 5893 (C.A.D.C. 1965).

Marital debts.

Divorced wife was liable, under statute governing spousal liability, for promissory note executed by her former husband for the purchase of their marital home. D.C. Code 1981, § 30-201. *Puma v. Sullivan*, 746 A.2d 871, 2000 D.C. App. LEXIS 46 (2000).

Evidence was sufficient for Superior Court to conclude that wife's medical bills incurred during the marriage were marital debts of which husband was partially responsible where husband did not indicate until after wife underwent treatment that he would no longer bear responsibility for medical costs incurred after parties ceased living together, husband obtained health insurance for wife while they were living together but did not cancel her coverage after they began living apart, and husband advised hospital that he would provide insurance forms to cover wife's treatment. *Bowser v. Bowser*, 515 A.2d 1128, 1986 D.C. App. LEXIS 447 (1986).

Respective liability of husband and wife on revolving charge account opened in husband's name for purchases of household items by husband and wife was to be determined by statute in effect at time department store filed suit, rather than statute in effect on date husband opened the account, so that wife was properly held liable for such purchases after the account had become delinquent. D.C. Code 1973, § 30-211; D.C. Code 1981, § 30-201. *Lawson v. Sears, Roebuck & Co.*, 473 A.2d 379, 1984 D.C. App. LEXIS 345 (1984).

Necessaries and family expenses.

Under the common law and under District of Columbia law the husband is primarily liable for "necessaries" furnished his wife which include funeral expenses and such obligation is not affected by the Married Women's Act. D.C. Code 1940, §§ 30-201 et seq., 30-211. In re *Tunison's Estate*, 75 F.Supp. 573, 1948 U.S. Dist. LEXIS 2988 (D.D.C.1948).

Ownership.

Wife was not "owner" of husband's taxi;

owner of vehicle is person who can sell it, and wife had no right to transfer husband's vehicle. *Tesfamariam v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 645 A.2d 1105, 1994 D.C. App. LEXIS 130 (1994).

Summary judgment.

Genuine issue of material fact existed as to whether former husband, during marriage to divorced wife, offered to extend promissory note's due date, and as to when the note was breached, precluding summary judgment in creditors' action to recover on the note from divorced wife. D.C. Code 1981, § 30-201. *Puma v. Sullivan*, 746 A.2d 871, 2000 D.C. App. LEXIS 46 (2000).

Tenancy by entirety.

Tenancy by the entirety is recognized whether the subject matter is real or personal. D.C. Code § 30-201 et seq. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

Rights and remedies of existing creditors cannot be obliterated by the expedient of erecting a tenancy by the entirety in property that is otherwise vulnerable. D.C. Code § 30-201 et seq. In re Estate of Wall, 440 F.2d 215, 1971 U.S. App. LEXIS 11722 (C.A.D.C. 1971).

"Tenancy by entirety" is available only to husband and wife and is a convenient mode of protecting a surviving spouse from inconvenient administration of the decedent's estate and from the other's improvident debts, each has the right to receive the property at the death of the other clear of the latter's attempt to encumber it or subjection to payment of his obligations and the accretion to sole ownership is subject to taxation. D.C. Code 1940, § 30-201 et seq.; 26 U.S.C. § 2040. *Fairclaw v. Forrest*, 130 F.2d 829, 1942 U.S. App. LEXIS 3204 (1942).

In absence of agreement to the contrary, each spouse retains tenancy by the entirety in proceeds from sale of property held as tenancy by the entirety. *Roberts & Lloyd, Inc. v. Zyblut*, 691 A.2d 635, 1997 D.C. App. LEXIS 44 (1997).

While bank account held as tenancy by the entirety is subject to same restrictions as any other property similarly held, that does not

mean that rights and remedies of existing creditors can be obliterated by simple expedient of erecting tenancy by the entirety in property that is otherwise vulnerable to execution. *Roberts & Lloyd, Inc. v. Zyblut*, 691 A.2d 635, 1997 D.C. App. LEXIS 44 (1997).

Although Supreme Court's *Settle* decision established rule of construction that property conveyed to married persons as joint tenants is presumed to be held as tenants by the entirety, it does not preclude married persons from owning property other than as tenants by the entirety. *Roberts & Lloyd, Inc. v. Zyblut*, 691 A.2d 635, 1997 D.C. App. LEXIS 44 (1997).

Tenancy by entirety precluded any other transfer or conveyance of property by wife other than as specified in statute relating to divorce, and hence effect could not be given to will of deceased spouse, under which property would go to her daughters. D.C. Code 1981, § 16-910. *Miller v. Miller*, 487 A.2d 1156, 1985 D.C. App. LEXIS 300 (1985).

Real property held by husband and wife as tenants by entirety passed to surviving spouse when no final divorce decree had entered even though prior to deceased spouse's death, surviving spouse abandoned marital abode, deceased spouse filed complaint for absolute divorce, and surviving spouse filed answer which requested court to adjudicate property rights of parties. D.C. Code 1981, § 16-910. *Miller v. Miller*, 487 A.2d 1156, 1985 D.C. App. LEXIS 300 (1985).

Imposition of constructive trust on property held by husband and wife as tenants by entirety was not justified and property was to pass to surviving spouse, even though prior to deceased spouse's death, surviving spouse abandoned marital abode, deceased spouse filed complaint for absolute divorce, surviving spouse filed answer, and deceased spouse purported to will property to her daughters. D.C. Code 1981, § 16-910. *Miller v. Miller*, 487 A.2d 1156, 1985 D.C. App. LEXIS 300 (1985).

Tort actions.

Tort action against spouse alleging conduct constituting intentional infliction of emotional distress was permissible as interspousal immunity is abolished. *Rubenstein v. Rubenstein*, 117 WLR 729 (Super. Ct. 1989).

SUBTITLE II. REPEALED PROVISIONS.

CHAPTER 7. UNIFORM SUPPORT. [REPEALED]

Sec.

46-701 to 46-726. [Repealed].

§ 46-701. Purposes; effective date. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 1; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-301. 1973 Ed., § 30-301.

Legislative history of Law 11-81. — Law 11-81, the “Uniform Interstate Family Support Act of 1995,” was introduced in Council and assigned Bill No. 11-169, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 27, 1995, it was assigned Act No. 11-157 and transmitted to both Houses of Congress for its review. D.C. Law 11-81 became effective on February 9, 1996.

§ 46-702. Definitions. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 285, Pub. L. 85-94, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(f)(1); Feb. 24, 1987, D.C. Law 6-166, § 33(f)(1), 33 DCR 6710; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-302. 1973 Ed., § 30-302.

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

§ 46-703. Existing remedies preserved. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 3; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-303. 1973 Ed., § 30-303.

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

§ 46-704. Extent of duties of support. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 4; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-304.

1973 Ed., § 30-304.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

§ 46-705. Remedies of a state furnishing support or institutional care. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 5; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-305. legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.
1973 Ed., § 30-305.

Legislative history of Law 11-81. — For

§ 46-706. Commencement of proceedings; jurisdiction of Superior Court. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 586, Pub. L. 91-358, title I, § 165(d); Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-306. legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.
1973 Ed., § 30-306.

Legislative history of Law 11-81. — For

§ 46-707. Complaint; verification; contents; attachments. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 7; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-307. legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.
1973 Ed., § 30-307.

Legislative history of Law 11-81. — For

§ 46-708. Representation of plaintiff by Corporation Counsel or private counsel. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 286, Pub. L. 85-94, § 8; Feb. 24, 1987, D.C. Law 6-166, § 33(f)(2), 33 DCR 6710; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-308. legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.
1973 Ed., § 30-308.

Legislative history of Law 11-81. — For

§ 46-709. Complaint on behalf of minor dependent. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 9; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-309. legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-710. Duty of Court when District is initiating state. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 10; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-310. legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 12-81. — For

§ 46-711. Fees and costs to accompany complaint; waiver of payment. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 11; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-311. legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 12-81. — For

§ 46-712. Flight of defendant from jurisdiction of responding state. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 12; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-312. legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-713. Duties of Director of Department of Human Services. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 13; Feb. 24, 1987, D.C. Law 6-166, § 33(f)(3), 33 DCR 6710; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-313.
1973 Ed., § 30-313.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-714. Duty of Court when District is responding state. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 287, Pub. L. 85-94, § 14; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-314.
1973 Ed., § 30-314.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-715. Orders of Court on finding duty of support. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 15; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-315.
1973 Ed., § 30-315.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-716. Copies of orders to be transmitted to initiating state. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 16; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-316.
1973 Ed., § 30-316.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-717. Duties of Court as to receipt and disbursement of payments. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 17; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-317.
1973 Ed., § 30-317.

Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

§ 46-718. Husband and wife as witnesses. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 18; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-318. 1973 Ed., § 30-318.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-719. Crediting of payments under support orders. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 19; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-319. 1973 Ed., § 30-319.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-720. Duty to support illegitimate child. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 20; Oct. 1, 1976, D.C. Law 1-87, § 34, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 114, 23 DCR 8737; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Cross references. — Acknowledgement of parentage, issuance of new birth certificates, see § 7-210.

1973 Ed., § 30-320.

Legislative history of Law 11-81. — For legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Prior Codifications. — 1981 Ed., § 30-320.

§ 46-721. Effect of participation in proceedings. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 288, Pub. L. 85-94, § 21; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-321. 1973 Ed., § 30-321.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-722. Right of appeal. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 22; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 159(f)(2); Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-322.
1973 Ed., § 30-322.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-723. Severability. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 23; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-323.
1973 Ed., § 30-323.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-724. Appropriations. [Repealed].

Repealed.

(July 10, 1957, 71 Stat. 289, Pub. L. 85-94, § 24; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-324.
1973 Ed., § 30-324.

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

Legislative history of Law 11-81. — For

§ 46-725. Registration of foreign support order. [Repealed].

Repealed.

(July 10, 1957, Pub. L. 85-94, § 24a, as added Feb. 24, 1987, D.C. Law 6-166, § 33(f)(4), 33 DCR 6710; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-325.
Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

§ 46-726. Effect of foreign support order. [Repealed].

Repealed.

(July 10, 1957, Pub. L. 85-94, § 24b, as added Feb. 24, 1987, D.C. Law 6-166, § 33(f)(4), 33 DCR 6710; Feb. 9, 1996, D.C. Law 11-81, § 902, 42 DCR 6748.)

Prior Codifications. — 1981 Ed., § 30-326.
Legislative history of Law 11-81. — For

legislative history of D.C. Law 11-81, see Historical and Statutory Notes following § 46-701.

